









---

**COBBETT'S  
COMPLETE COLLECTION**

**OF**

**State Trials.**

**VOL. V.**

---



COBBETT'S  
COMPLETE COLLECTION

OF

State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER  
CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE PRESENT TIME.

---

---

VOL. V.

COMPRISING THE PERIOD

FROM THE SECOND YEAR OF THE REIGN OF KING CHARLES  
THE SECOND, A. D. 1650, TO THE THIRTEENTH YEAR  
OF THE SAID REIGN, A. D. 1661.

---

---

LONDON:

PRINTED BY T. C. HANSARD, PETERBOROUGH-COURT, FLEET-STREET.

PUBLISHED BY R. BAGSHAW, BRYDGES-STREET, COVENT-GARDEN; AND SOLD  
BY J. BUDD, PALL-MALL; J. FAULDER, NEW-BOND-STREET; SHERWOOD,  
NEELY AND JONES, PATERNOSTER-ROW; BLACK, PARRY AND KINGSBURY,  
LEADENHALL-STREET; BELL AND BRADFUTE, EDINBURGH; AND J. ARCHER,  
DUBLIN.

1810.

**COBBETT'S**  
**COMPLETE COLLECTION**

OF

**State Trials**

AND

**PROCEEDINGS FOR HIGH TREASON AND OTHER  
CRIMES AND MISDEMEANORS**

FROM THE

**EARLIEST PERIOD TO THE PRESENT TIME.**

**VOL. V.**

**COMPRISING THE PERIOD**

**FROM THE SECOND YEAR OF THE REIGN OF KING CHARLES  
THE SECOND, A. D. 1650, TO THE THIRTEENTH YEAR  
OF THE SAID REIGN, A. D. 1661.**

**LONDON:**

**PRINTED BY T. C. HANSARD, PETERBOROUGH-COURT, FLEET-STREET.**

**UBLISHED BY R. BAGSHAW, BRYDGES-STREET, COVENT-GARDEN; AND SOLD  
BY J. BUDD, PALL-MALL; J. FAULDER, NEW-BOND-STREET; SHERWOOD,  
NEELY AND JONES, PATER-NGSTER-ROW; BLACK, PARRY AND KINGSBURY,  
LEADENHALL-STREET; BELL AND BRADFUTE, EDINBURGH; AND J. ARCHER,  
DUBLIN.**

**1810.**



# TABLE OF CONTENTS

TO

## VOLUME V.

### STATE TRIALS IN THE REIGN OF KING CHARLES THE SECOND.

A. D. 1627—1640.

*The new Matter is marked [N.]*

	<i>Page</i>
187. PROCEEDINGS, Examination, and Trial of Colonel EUSEBIUS ANDREWE, more commonly written Andrewes, (a Barrister of Gray's-Inn), before the High Court of Justice, for High Treason, A. D. 1650 - - -	1
188. The Trial of Mr. CHRISTOPHER LOVE, before the High Court of Justice, for High Treason, A. D. 1651 - - - - -	43
189. The Trial of Mr. JOHN GIBBONS, before the High Court of Justice, for High Treason, A. D. 1651 - - - - -	267
190. Proceedings against JAMES STANLEY Earl of DERBY, Sir TIMOTHY FETHER- STONHAUGH, and Captain JOHN BENBOW, before a Court Martial, for High Treason, A. D. 1651 [N.] - - - - -	294
191. The Trial of Major RICHARD FAULCONER, at the Upper Bench Bar in Westminster-hall, upon an Indictment for Perjury, A. D. 1653 - - -	323
192. The Case of Captain JOHN STREATER, on an Habeas Corpus, at the Upper Bench in Westminster-hall, A. D. 1653 - - - - -	366
193. The Trial of Mr. JOHN LILBURN, at the Sessions of the Peace held for the City of London, at Justice-Hall in the Old Bailey, for returning into England, being banished by Act of Parliament, A. D. 1633 - - -	407

# TABLE OF CONTENTS.

Page

The Examination of the JURY who tried and acquitted Lieutenant Colonel JOHN LILBURNE, at the Sessions-House in the Old-Bailey, upon Saturday the 20th of August, 1653. Taken before the Council of State the 23d of the same Month, in pursuance of an Order of Parliament of the 21st - - - - - 446

Several INFORMATIONS and EXAMINATIONS taken concerning Lieutenant-Colonel JOHN LILBURNE, shewing his Apostacy to the Party of Charles Stuart: And what his Intentions are in coming over into England out of Flanders - - - - - 405

194. Case of the Privileges of Embassadors, being the Proceedings against DON PANTALEON SA, Brother of the Embassador from the King of Portugal to England, for Murder in a Riot in the New Exchange, A. D. 1654 [N.] - - - - - 462

195. The Trial of JOHN GERHARD, PETER VOWELL, and SOMERSET FOX, before the High Court of Justice, for High Treason, in conspiring to murder the Lord Protector, A. D. 1654 - - - - - 518

196. Proceedings of the Commissioners appointed by Oliver Cromwell for ejecting Scandalous and Insufficient Ministers, against JOHN PORDAGE, of Bradfield, in the County of Berks, A. D. 1654 - - - - - 539

197. Proceedings of the Commissioners appointed by Oliver Cromwell for ejecting Scandalous and Ignorant Ministers. In the Case of WALTER BUSHNELL, Clerk, Vicar of Box, in the County of Wilts, A. D. 1656 [N.] 634

Proceedings against Dr. JOHN POCKLINGTON, for Innovations into the Church of England, A. D. 1641 [N.] - - - - - 747

198. The Trial of the Hon. Colonel JOHN PENRUDDOCK, at Exon, for High Treason, A. D. 1655 - - - - - 767

199. Proceedings of the Lord Protector and his Council against Sir HENRY VANE, knt. for the publication of a Book, intituled, "A Healing Question, " propounded and resolved, upon occasion of the late public and reasonable Call to Humiliation, in order to Love and Union amongst " the honest Party," A. D. 1656 [N.] - - - - - 791

200. Proceedings in the House of Commons against JAMES NAYLER, for Blasphemy, and other Misdemeanors, A. D. 1656 - - - - - 802

The Grand Impostor examined: Or, the Life, Trial, and Examination of JAMES NAYLER, the seduced and seducing Quaker; with the Manner of his Riding into Bristol [N.] - - - - - 827



## TABLE OF CONTENTS.

	<i>Page</i>
201. The Trial of MILES SINDERCOME, alias FISH, before the Lord Chief Justice Glynn, and Mr. Justice Warburton, at the Upper-Bench, Westminster, for High Treason, A. D. 1657	842
202. The Trial of Sir HENRY SLINGSBY, <i>knt.</i> before the High Court of Justice, for High Treason, A. D. 1658	871
203. The Trial of Dr. JOHN HEWET, before the High Court of Justice, for High Treason, A. D. 1658	883
204. The Trial of JOHN MORDANT, <i>esq.</i> before the High Court of Justice, for High Treason, A. D. 1658	907

### ADMINISTRATION OF JUSTICE during the USURPATION of the GOVERNMENT

- 935

205. The Trials of TWENTY-NINE REGICIDES, at the Old Bailey, for High Treason, which began on the 9th of October, A. D. 1660	947
Introduction	947
Resolutions of the Judges	971
The Proceedings	985
Trial of Sir Hardress Waller	995, 1220
- - - of Thomas Harrison	998, 1008, 1230
- - - of William Heveningham	1000, 1219, 1229
- - - of Isaac Pennington	1000, 1198
- - - of Henry Marten	1000, 1199
- - - of Gilbert Millington	1002, 1203
- - - of Robert Tichbourn	1002
- - - of Owen Roe	1003, 1204
- - - of Robert Lilburne	1003, 1205
- - - of Adrian Scroop	1004, 1034, 1298
- - - of John Carew	1004, 1048, 1237
- - - of John Jones	1004, 1072, 1283
- - - of Thomas Scot	1004, 1058, 1272
- - - of Gregory Clement	1004, 1283
- - - of John Cook	1004, 1077, 1247
- - - of Francis Hacker	1005, 1176, 1286
- - - of Edmund Harvey	1005, 1176
- - - of Henry Smith	1005, 1205

## TABLE OF CONTENTS.

	<i>Page</i>
<b>Trial of John Downs</b> . . . . .	1005, 1210
- - - of Vincent Potter . . . . .	1005, 1214
- - - of Augustine Garland . . . . .	1005, 1215
- - - of George Fleetwood . . . . .	1005
- - - of Simon Meyn . . . . .	1006
- - - of James Temple . . . . .	1006, 1217
- - - of Thomas Waite . . . . .	1006, 1217
- - - of Hugh Peters . . . . .	1007, 1116, 1279
- - - of Daniel Axtel . . . . .	1007, 1146, 1286
- - - of Peter Temple . . . . .	1217
- - - of William Hulet . . . . .	1145, 1185
- - - of Colonel Okey . . . . .	1301
- - - of Miles Corbet . . . . .	1301
- - - of Colonel Barkstead . . . . .	1301

**206.** Proceedings upon an Impeachment against WILLIAM DRAKE, for Writing, Printing, and Publishing a false, wicked, malicious, and seditious Pamphlet, intituled, "The Long Parliament revived," A. D. 1660 [N.] 1363

**207.** Proceedings in Scotland against ARCHIBALD Marquis of ARGYLE, for High Treason, A. D. 1661 . . . . . 1370

# COBBETT'S COMPLETE COLLECTION

OF

## State Trials.



187. The Proceedings, Examination, and Trial of Colonel EUSEBIUS ANDREWE, more commonly written Andrewes, (a Barrister of Gray's-Inn) before the High Court of Justice, for High Treason: 2 CHARLES II. A. D. 1650. [Published by Francis Buckley, Gent. who was Assistant to Mr. Andrewe in the time of his Imprisonment, and an Eye-witness of all the bloody and execrable Proceedings ]

ON Monday the 24th of March, 1650, col. Andrewe was taken prisoner at Gravesend by major Parker, and conveyed to Westminster. The next day, he was conveyed before the Lord-President Bradshaw, sir Henry Madenay, knt. and Thomas Scot, esq. three members of the Council of State, delegated by the Council for the taking of the Examination of him, and of sir Henry Chicheley, knt. Dr. Henry Edwards, and Mr. Clark, casually found in the same Inn with Mr. Andrewe.

Those gentlemen examined him so punctually to every action and circumstance that had passed on his part since he took up arms, and especially since the surrender of Worcester, and his return from thence to London; and also concerning his several lodgings, names, acquaintances, removes, abodes in the country, correspondencies by letters, and interest in places and persons, as if they had kept a diary for him. Which considered, and that sir John Gell, bart. major Barnard. capt. Smith, capt. Benson, and capt. Ashley, (with whom he had the last and most questionable correspondence) were all in custody, he found himself to be betrayed, but could not at present guess by whom; but well saw that he had better be fair in his confession, than to deny what he saw by the perfectness of his examiners, could be proved against him, by the discovery of some of those formerly secured, and examined before his coming up.

In his Answer, he would have been circumstantial, but was kept close to the question:

VOL. V.

at his departure he desired that he might set down his own Narrative, according to his own sense, which was granted him to prepare, and to send or bring to them as there was opportunity. And having to say, as much as in him lay, evened his fellow-prisoners as to any thing relating to his Delinquency, he was with them committed to the Gatehouse.

Wednesday following, he was re-convented and re-examined.

On Friday, he was again convented, and delivered in his Narrative to the Lord President, and the House. But business happening, detaining the other two examiners, he was by the President returned.

On Saturday he was recalled, and then, as at all times before, used and treated with civility, and no little pressure to discover some great persons, his supposed confederates: the aim, as he conjectured, and that upon strong inference, and some expressions, was at sir Guy Palmes, sir John Curson, and sir Thomas Whitmore, &c. But he accounted it a great blessing in his unhappiness, that his misfortune was not fatal to any of his friends or familiars, who yet knew nothing of the reason of his imprisonment, more than for what they were beholden to common fame.

On Sunday he was called out of his bed, and by two messengers, his keeper, and his man, brought into a boat at King's-bridge, at Westminster, and thence carried to the Tower. The warrant, which at the Lieutenant's house was read, imported, that he was committed close

B

prisoner for High-Treason, in endeavouring to subvert the present government, &c. to be kept till deliver'd by law.

The Narrative follows:

To the Right Honourable the Council of State;  
The humble NARRATIVE \* of col. Ensebius Andrewe, as to the Questions and Matters of Charge, whereupon he was examined before President Bradshaw, sir Henry Mildmay, and Thomas Scot, esq. in that behalf delegated by the Council the 27th of March, 1650.

May it please your Lordships; being unfortunately, and by a treacherous practice seduced into an action which renders me obnoxious to your lordships' displeasure and justice, and thereupon convicted and brought to examination, I assured your lordships delegates that I came with a resolution to deal candidly, and not to preserve my life by framing a lye, or denying a truth. The same purpose I still retain, casting myself wholly at your lordships feet; humbly praying leave, that while I answer to matter of fact, I may be permitted to cloath it with pertinent circumstances; that while the one lays me liable to your justice, the other may bring me within the capacity of your mercy; which in case it be afforded, I shall embrace with all humility and thankfulness. And if denied, I shall find cause within my bosom to justify God Almighty in his permission of my ruin; and I hope charity enough to forgive whosoever have, or shall be instrumental to it, and bear the burden of my folly, with a sober confidence of God's reserved favour.

My Engagement for his late majesty began soon after Hillary Term, 1642, and continued until the surrender of Worcester, in July 1645. I have omitted to make my Composition, not having a considerable, and not willing to own an inconsiderable estate. I have not taken the Protestation, Solemn League and Covenant, Negative Oath, nor subscribed the present Engagement.

John Barnard, sometime a major under me, and by reason of his good parts and sober demeanor, being in my good opinion, at my return to a private practice in my calling for my necessary support, frequently visited me, and imparted to me such occurrences as he met abroad in discourse, and did often intimate the discontent of the Reformades, the factions of the Levellers and Agitators, and the proceeding of a certain Committee, or select Council of Officers, of which col. Cook was chief, and himself their clerk, upon a printed charge against some for oppression, and against others for concealed Delinquency; to the penning, promoting or counselling in which I was originally a stranger, nor did ever interest myself therein further than the hearing his discourse; neither did ever mediately or immediately meddle with any of the persons or actions of the Reform-

ades, Levellers or Agitators upon any of his discourses.

About \* Trinity-Term last, major Barnard obtruded to my acquaintance one capt. Holmes, who soon after brought with him one John Benson, (who pretended to have had command under sir John Gell, was anciently his servant, and until this time his dependant,) who uninvited, frequently produced to me transcripts of Letters, (with the copying of which he pretended to be entrusted under Mr. Rushworth) which did appear to purport the occurrences in reference to the affairs of state, and their concerns at home and abroad, from their several agents; which I only read in his sight, and immediately delivered them back, he pretending that he was to carry them to Mr. Thomas Bushel to be transmitted over sea.

Capt. Holmes, and John Benson, in their discourses, did insinuate that their interest was great in the Reformades, and that by them great advantage would upon any importunity be done for the royal party, and magnified sir John Gell's interest in his country, his reluctance at what he had done in the Parliament's service, and his willingness to expiate his former fault with a beneficial service to the Prince. And major Barnard propounded, that a former design in the time of the war, laid by me for the taking of the Isle of Ely, might by their help, and the conjuncture of some strength to be raised by sir John Gell, then to me a stranger, and by Holmes and Benson, pretended to be willing and able to raise considerable numbers, be revived and executed; and thereupon it was concluded, that I should with Benson try who in Cambridgeshire would engage in it, and then ride down to sir John Gell, to see if his strength and purpose were such as pretended; and this not to be executed but upon the contingency of successes in Ireland, and Scotland, was let fall as soon as conceived.

About the middle of December, captain Holmes brought me instructions, to draw a petition for sir John Gell, for the getting of his arrears, which I drew accordingly; and not long after, I was invited to give him a meeting, till then having not seen or corresponded with him, and received an invitation and instruction to arbitrate between him and his lady, with sir Thomas Priestwich. And amongst other discourses, sir John Gell did take notice of his irrequital of his service, and his losses, and the misapplication of his, and other services, to an end they intended not, and that he desired to be so understood, and when opportunity should be, to be so represented to the Prince; and did intimate, that if ever he took up arms again, it should be for the Prince: and at several other subsequent meetings the discourses were general, and much to this purpose, but no particular design laid or contrived.

\* This error in time, as some others both of substance and circumstance, are rectified upon better memory, by some following papers sent to the Lord President:

\* The Narrative is here printed at large, being the Evidence urged against him at his Trial.

The time limited by the act for departure, &c. being near expired, and myself being purposed to withdraw into the country, until the summer voyage, into some of the Plantations, and to that purpose being in treaty with sir Edmund Plowden, about the conditions of New Albion plantation, of which he writes himself Count Palatine, and Proprietor; on Saturday, 16<sup>th</sup> Martii, I was unexpectedly visited by major Barnard and John Benson, and they enquiring my resolution concerning my leaving the town in obedience to the Act, I signified my purpose to go to New Albion or to Virginia: upon which they took an opportunity to make a proposal to me in effect, that they had a considerable design laid, and funds and money to set on foot and back it, and that I should have 200*l.* in hand, and power to draw money by bills of exchange, for what more should be necessary for my support, and management of what should concern the said design in Holland, if I would undertake to go over, and promote it to the Prince. And they did then in general terms signify, that it was an easy matter, especially the Cavaliers going out of the town, by correspondence in all counties, to surprize the horse of the army in their several quarters; and did intimate, that major Barnard had a design in draught, which as I remember he produced, and I believe was concerning such surprisals; but was not read, but referred to further time of consideration. My answer was, that if the money were ready, I would divert my former purpose from any plantation, and entertain the motion.

Sunday morning, they came again and informed me, that several persons of quality and fortune in Kent, Buckingham, and Dorset, were, or would then presently come up near the town, and would join in an Engagement, and advance money; and that sir J. Oell would also engage, and might with a word of his mouth bring in his friends, and sir Andrew Kniveton, sir Guy Palms, and Mr. Fitzherbert, and a fourth person, whose name I remember not; and therefore desired me to draw an Engagement, (which I did in a loose paper, after the sense of them or one of them, the said Barnard or Benson, instructed) and to move sir John Gell to join in such an Engagement; but did press me to join in the same at that present, for the encouraging of their before-mentioned friends, amongst whom, I remember only these surnames, Boyes, Thatcher, and Baker, all to me absolute strangers.

That day I spake with sir John Gell, and acquainted him with their offer and proposal to me, and desire from him. He answered, that he would not meddle with acting in that design (which he took upon him to be acquainted withal), for which he was as then in no capacity, nor would be engaged under his hand and seal, to be bound to, by any future action for them; for that Benson was a fellow given to drink, and lavish of his tongue: but entrusted me, that if I went over upon this occasion, to possess the Prince with a good opinion of him,

and that he would do nothing against him; and if he were at all in command, he would be so to his advantage, or to that effect.

I returned to them sir John Gell's answer, with which they were not, or seemed not altogether unsatisfied, and appointed on Monday at five of the clock, that the persons of the counties of Kent, Buckingham and Dorset, or some of each county from the rest, should give a meeting at the Three Cranes, at the Savoy-Gate, and be all satisfied in the design, and agree their respective portions of money to be paid in present, and raised for the future; desiring me to take care to move, that they might be also provided for, to be able to hold intelligence, and ride about from place to place to lay the design.

At the time I came; and major Barnard produced two letters, one subscribed by Smith, another by Thatcher, purporting that the Kentish gentlemen were come as far as Rochester, and would that night be within twelve miles of London, and be there all day, and then in the evening, on Tuesday by eight of the clock, would at any place give meeting to himself, and his colonel; and that they had sent a special guide to bring Barnard to them that night, whither he was instantly desired to repair, and that they durst come no nearer, in fear of the watchfulness of col. Blunt, and that the 250*l.* were ready to be laid down to perform their undertaking: No man of any county giving any meeting according to the first appointment at the Cranes, but the said Barnard and Benson, and one who calls himself captain Ashley, only known in face to me, who pretended to be privy and knowing of the truth of all that their former discourse and these letters tended to: and Barnard pretending to go instantly to horse from Westminster, I brought him and Benson to the water-side, and in the walk they importuned me again to obtain sir John Gell's signature and seal to the Engagement, which Benson had then ready engrossed, and that I would go presently to Westminster with them about it; which I refused, and told them; that I was able to satisfy any man of quality, discretion, and secrecy, concerning sir John's reality, though not actually engaged; and so left them.

That night about eight of the clock, one Smith came to me (till then) an absolute stranger, and captain Ashley came to me, and brought me a letter from major Barnard, highly reproving me and sir John Gell of backwardness, in with-holding our own hands from the Engagement, and that we intended our own honours upon their dangers, without giving them assurance of our secrecy and constancy; and that unless the Engagement were subscribed by sir John Gell, his Kentish friends would not proceed further. I was known to Mr. Smith, who took upon him to come as from them for satisfaction in that point. And in answer, I under a vow of secrecy told him, that I was satisfied concerning sir John Gell, and presumed, that if any gentleman of quality, in whose

judgment the rest would abide, should address to sir John, that under an oath of secrecy he would satisfy him, but durst not trust Benson, and Barnard was to him a stranger. With this they departed, assuring me that they thought no more would be expected from sir John, and that they would, or one of them, away that night to the company; and that the next day being Tuesday, the money should be paid at the Palsgrave's head.

They broke their time, and my occasions prest me into London, being next day to be gone by the Act; and about 6 of the clock, at night, I was sent for by captain Ashley and Benson, who delivered me a letter from Barnard, pressing me to subscribe the Engagement which Benson engrossed; and that being done, he would go with me the next day to Gravesend, and the gentlemen of Kent should meet there, and there the money to be paid.—The tide being fit for passage on Wednesday, Barnard came not, but Benson pretended him to be at Tottenham-court with the Buckinghamshire gentlemen, and that he was well horsed, and would come presently, and should follow; and so captain Ashley and myself, with no more than 20s in my purse, presuming upon the money then, went to Gravesend, and expected till Thursday night, but found no Kentish men, and no one from London coming. Capt. Ashley went that night with the exchequer for London, to enquire the reason; and on Friday morning early came master Barnard, and Mr. Smith with a letter from Benson, purporting that if sir John Gell would not engage under his hand and seal, with those whose names were subscribed, of which I only know Barnard, Smith, Benson, and A-Bev, they would go over themselves, and among themselves and Barnard, to the Tower, and spend the time and Sir John's credit with him, and at that point all that I intended in his favour, and that he had letters from sir John, which he could produce, should make him repent his refusal, or to such effect; and therefore desired me to write to sir John Gell, to let him see his danger, which I did, laying the case before him, and not pressing him, but leaving him to do as God should direct him, and his judgment lead him. With which letter Barnard and Smith went away, with assurance that whether sir John Gell engaged or not, I should hear next day from them, and if he did engage, they would come down and go for Rochester, where their former undertaking should be performed to me; and if he did not, I should be disengaged, and have my subscription and seal sent me, and the design should fall. I expected all Saturday night, and finding no answer, resolved on Monday to intend my privacy in the country, upon my first purpose for New Albion; and in the morning early was seized by a party of horse, and brought to London.

My Lords; In that Narrative you will see a believing nature wrought upon by treacherous men, such who cannot be true to any, whilst false to parties.—The pretended design vanish-

ed, as never being more than a phantasm, and not worth your regard, the real design effected, so far as they had power or opportunity; that is, to bring the game into the toil, and there leave them to be entangled and made a quarry. You will find me passively active, being prompted and enticed by their insinuation, and not once but hearkening to them. It lies in your lordship's power to cut me off, by extending which, you can arrive to no honour amongst men; and possibly, by an act of lenity, you may do an office acceptable to God.

*'Cujus fiat voluntas, modo in ruinâ meâ.'*

Whosoever shall be present at my Trial, or into whose hands this Narrative shall fall, will easily conclude with me,

*'Quos vult perire Deus, hos dementat prius.'*  
EUS. ANDREWE.

On Tuesday the 1st of April, after his remove to the Tower, he was called to be further examined, and at his return went back to them some particulars, (viz.) concerning captain Holmes, by want of memory not before signified. And in case the state should have suffered ought by the said Holmes, it might have made Mr. Andrewes incapable of lawful favour by reason of his tenacity concerning the said Holmes, who, for aught Mr. Andrewes knew, was guilty of his being betrayed; and it so, might as well intimate his knowledge of Holmes's purposes, to the end that Mr. Andrewes's concealment of them might augment his crime; and also concerning Mr. Thomas Barnard, who being at large and unquestioned, Mr. Andrewes had cause to have the like jealousy of.

On Friday seven-night following, being the 11th of April, he was called again, and was confronted with sir John Gell, and avowed what he did indeed neither directly deny, nor was troubled that he did not, freely telling the President, that howbeit he did not remember some things in point, yet he was confident that he would not do him, nor any man wrong; and then declared to the President, that he looked upon sir John Gell, as upon himself, as a betrayed man; but as concerning others, he knew not by whom, he had been free in his confessions, though to his own injury. He then acquainted their lordships, that he had something to rectify in his former examinations and Papers, upon better memory, in point of material circumstances. They directed him to put them into writing, and to send them, and they called for his hand to the former Examinations and Papers; which he gave them, and the same day went to them as followeth:

To the Right Honourable the Lord-President and Council of State.

May it please your Lordships; According to the favourable licence by your lordships to me given, I have digested into writing those matters of circumstance, wherein my Examinations and Narrative are in defect of my memory only uncertain and short; humbly praying, that they

may be received and made a part of that relation, which I must abide by at my Trial; and that the former errors may be rectified, and defects supplied so far, as by this supplementary account upon my serious recollections given, may be done. And I shall then be confident, I shall appear not to have wilfully concealed, however guilty, or misrendered any thing pertinent, whether the same carry with it my Condemnation, or excuse.

What passed between myself and Mr. Barnard, before my acquaintance with Holmes and Benson, and which is express in my Answers and Narrative, was in time before Easter-Term last, when there was an order for departure of persons in my condition, from this town: and I, in obedience thereunto, did leave this city on Saturday the 6th of May, and came to Mr. Osborn's house at Carlton-Hall in Suffolk, on Thursday following; from whence I stirred not at any time more than 5 miles, until the 6th of August, when I was sent for to make assurances between a kinswoman and her husband in point of jointure, by them to me mutually referred: in which business, and in other matters between another kinswoman, and a merchant of London, being under reference to a writement: as also in endeavouring to get some friend to contract in the behalf of my daughter, for the reversion of a lease holden of the dean and chapter of Ely, in which she is interested for a life in being. I continued in the city until the 3rd of September, at which time Barnard voluntarily brought his acquaintance Holmes and Benson, upon the pretences in my Answers and Narrative set forth, to which I humbly refer.

The Note which mentions Benson's going with me to Cambridgeshire, and so to sir John Gell, which in my Answers I have expounded, was drawn from me by Barnard's importunity, and written at his request; but what use he made of it, (other than to lay it up, and reserve it for his present purpose,) I know not, nor had any account of it, but went away the 3rd of September, there being no conclusion of any thing to be done in substance, or circumstance positive. But Mr. Barnard, who knew how to direct to me, promised by letter to intimate further to me; from whom after that, I never received any letter or message to that, or any other purpose, until my return near Michaelmas-Term; when he told me, that the unsuccessfulness of things in Ireland had been the impediment.

As to the day, viz. the 18th of October, being the fair day at Ely, it was only in discourse mentioned to be an opportune time, in case the Isle were (as indeed it was not) garrisoned. Neither any solemn, or serious design or conclusion, then to fore or then after made or had, other than in transient conversation; nor any person engaged so much as by word or promise, until this fresh stratagem was set on foot by Barnard.

I drew sir John Gell's Petition before Christmas, and had several compliments from

him by Holmes, (at least pretended) before I saw him, and I believe, after Twelfth-tide I was invited to him, and entrusted by him in the composing the differences between him and his lady; in the last term I drew his Answer, and in the several times of our casual or occasional meetings, the discourses have amounted to what I have before signified, and in your presence and his avowed; and how more exactly to give your lordships an account in time, I cannot.

As to the matter of the Engagement, I abide by what I have formerly said, with this only, that at my engaging, which was late in the night, before my going out of town, in obedience to the Act, I was promised by Benson, that if sir John Gell, and their pretended friends of the country, did not co-engage, I should be disengaged; and in the hour of my going away, Barnard being not ready, according to promise, but by Benson pretended to be at Tottenham Court, with some Buckinghamshire men, and that he would undoubtedly follow: I told Benson, as I remember, in the presence of capt Ashley, that whether he came or not, I must for the present remove to Gravesend, not having convenience of horse to go elsewhere so suddenly. And if there were performance on Barnard's part with me, I should be ready on mine; and if not, I desire to be disengaged, and left to pursue my private occasions into Surrey. And I did trall, carry, with me deeds of my clients, to have employed myself upon, in case of their failure with me.

I humbly beg your lordships' pardon for a favourable interpretation of this trouble, which is a duty to truth, and right to others and myself; which could not be omitted by, my lords, your lordships' humble prisoner and servant,

EUS. ANDREWS.

This, together with a Petition for allowance and liberty of friends' resorts, being the same day signed in the presence of the Lieutenant, were sealed up, and sent to the Lord President's own hand. This was his second Petition, which, with a former to the same effect (and not of moment to subscribe) did never receive any answer. At the same time he writ to sir Henry Mildmay, on the behalf of the gentlemen who were taken with him.

Mr. Andrew, at several times, took upon him to aver to the Committee of State, that they had spies upon him for some years, and particularly Barnard; which the Lord President did not deny, but justified the state, by the practice of all states, to set watches upon persons of ill-affectations to them.

This day the Lord Grey was with the other three of the State.

His third Petition, sent about Easter, being by sir Henry Mildmay and Mr. Scott put upon it, to submit himself, with promise of favour, if he sought the State in such manner; which for his relations' sake he did, but with some caution, in these words:

To the Right Honourable the Lord President, and Council; the humble Petition of Eusebius Andrewe,  
Sheweth,

That your Petitioner is seriously sensible, and humbly acknowledgeth, that for his high delinquency against the State, he is become forfeited to their justice. That he hath not in the least prevaricated with your lordships, in the confession of his proper faults and follies, nor hath kept aught reserved concerning himself, or any person or thing, which may satisfy your lordships, and more secure the state, and is not hopeless to be looked upon as capable of your present favour and future mercy, which he now doth and shall always suppose. That his present deserv'd condition is made more uncomfortable by his wants, and the exclusion of his friends and relations, without a supply, in which life itself becomes a punishment. Your Petitioner, casting himself at the feet of your lordships, humbly prays, That his being prosecuted before the High Court of Justice may be suspended. That, by your order, his past and future charge of necessities may be discharged, whilst he remains your prisoner. That his friends and kindred may have recourse to him, and that he may have the freedom of his pen. And in case your Petitioner shall be found in the least to misapply those favours, he shall adjudge himself worthy of a total deprivation of them, and of your future goodness towards him.  
And your petitioner, &c.

This was less than was looked for, though as much as he could venture on; in which his desire for respite of his Trial was inserted, to prevent only his being the first, and exasperating them by giving others aim in the scrupling the court. This Petition was solicited thirty-three days, but no answer could be obtained; and his wants growing upon him daily, he put in the Lieutenant's hands this following Petition:

The Petition, (with Style as formerly, &c.)  
Sheweth,

That your Petitioner hath been 12 weeks close prisoner, his friends neither permitted to visit, nor daring to relieve him; his score for necessities swoll beyond his ability to discharge, his credit protested, and nothing more visible to him than his immediate perishing. That he hath not been wanting to pray your favours, having three petitions lodged with your lordships, constantly solicited, but unanswered. That he hath in his confessions spared nothing which can more conduce to the state's security, or his own condemnation. Your Petitioner therefore humbly prays, That, if at all he must, he may speedily receive his Trial, he being ready to submit to the will of God in the issue. That if mercy be reserved for him, which he hath and doth implore, your lordships would please to admit him to sue out his pardon, and to a free conversation in this Commonwealth, upon security given for his good demeanour. That in the mean time he may have the liberty

of the Church and Tower, and the freedom of his friends' resort; and that order may be given for the debt incurred there, in the time of his close restraint, to be discharged.

And your petitioner, &c.

The Warrant of Commitment, which I could not get a Copy of till the 14th of July, is as followeth:

These are to will and require you, herewith to receive into your custody the body of Eusebius Andrewe, esq. and him you are safely to keep in close imprisonment in the Tower of London, in order to his further examination, he being committed unto you for High Treason, in plotting and endeavouring the subversion and alteration of the present government. Of this you are not to fail; and for so doing, this shall be your Warrant.

Given at the council of state sitting at Whitehall, this 30th day of May, 1650.

Signed in the name and by the order of the council of state appointed by authority of parliament,

JOHN BRADSHAW, President.

To the Lieutenant of the Tower of London.

This Warrant is vicious in itself, for two Reasons, which make a right Warrant of Commitment, Coke's 2nd part Instit. fol. 52, 590, 591, allowed by the Parliament: 1. That it is not done by due process of law. 2. That it hath not a conclusion, viz. 'And safely to keep' until he be delivered by due course of law.' But leaves it indefinite, and is rather a condemnation to perpetual, at least, so arbitrary imprisonment, which is worse. The close imprisonment is but in order to his further Examination, and he had been twice since examined, and signed his Examinations before Easteg, and did not refuse to answer any question demanded of him.—The Warrant is dated from the Council of State sitting at Whitehall, the 30th of May; whereas he was brought to the Tower the 30th of March, being Sunday, by seven in the morning, at the opening of the gate (no Council sitting) and the Warrant signed on Saturday the 29th of March.

Having attended a month in expectation of an Answer to his last Petition, he petitioned the Parliament again

To the High and Honourable the Parliament of England,

The humble Petition of EUSEBIUS ANDREWE, Esq. close Prisoner in the Tower of London,

Sheweth,

That your Petitioner hath been, by a confederate Pack of Setters, wrought into actions, which (abstracted from their circumstances) render him liable to your justice; and this done, not without their further hope, that your Petitioner, as they supposed, had interest to have drawn divers persons of quality and fortune into the same entanglement.—That failing of that part of their aim, the said Confederates did be-



tray your Petitioner to the honourable Council of State, by whose Warrant he hath been sixteen weeks a strictly close Prisoner, without a fortune of his own, the access of friends, or means of subsistence allowed; and is to perish by his wants, before it be distinguished by a public Trial, whether he be a fitter object for the applying of your justice or your mercy.—That he is hereby disabled to be accountable to the service of God, the duty to his family and friends, and to those who give him credit for bread. And in case he should be called from such his close restraint to his Trial, must be destitute and deprived of all fair means of making his reasonable Defence; which, however, it may suit with policy, will not be consistent with religion and honour.

Your Petitioner having for relief in the premises, by all opportune Addresses, and by four Petitions importunately solicited and sought the said Council of State without Answer; in the deep sense of his pressing sufferings humbly appealeth to this High Court, casting himself wholly thereupon, and as humbly prayeth, 1. That you would prevent your justice by your mercy, and admit him to sue out his pardon, upon security given for his future good demeanour to the state in this Commonwealth. 2. That if that be too great a favour, you would grant him Licence to depart the Commonwealth, he engaging not to act, or contrive ought to the disservice of the state. 3. That if he be not thought capable of either, but that he must receive a public Trial, he may have a convenient time of preparation, after a qualifying of his imprisonment. 4. That in the mean time he may have the liberty of the Tower, and resort of his friends; and that by your order, his debt for livelihood, incurred in his close restraint, may be discharged.

In all which your Petitioner is ready to submit to the will of God, whose Providence hath put justice and mercy into your present dispensing. And shall ever pray.

Notwithstanding his Petitions and Letters, he was brought before the High Court of Justice (in August), of which John Bradshaw was President, and his own Narrative was urged against him as a Confession; and Attorney General Prideaux used him with very ill language. But he put into Court his Answers in writing, which were as follow:

The humble Answer of Eusebius Andrewes, Esq. in his Defence, to the Proceeding against him before the Honourable the High Court of Justice, presented the 16th day of August, 1650.

The said Respondent (with the favour of this honourable Court) reserving and praying to be allowed the benefit and liberty of making further Answer, off'reth to this honourable Court;

First, That by the Statute or Charter, stiled Magna Charta, which is the fundamental law, and ought to be the standard of the laws of England, confirmed above thirty times, and yet

unrepealed, it is in the 29th chapter thereof granted and enacted, '1. That no freeman shall be taken, or imprisoned, or be disseised, of his freehold or liberties, or free custom, or be outlawed or exiled, or be any otherwise destroyed; nor will we pass upon him, nor condemn him, but by a lawful judgment of his peers, and by the laws of the land. 2. We shall sell to no man, nor defer to any man justice or right.'

Secondly, That by the statute of 42 of Edw. 3, chap. 1, 3. The Great Charter is commanded to be kept in all the points. And, 2. It is enacted, that if any Statute be made to the contrary, that shall be holden for none; which Statute is unrepealed.

The Respondent observeth, That by an Act of the 26th of March, 1650, entitled, 'An Act for establishing an High Court of Justice,' power is given to this Court to try, condemn, and cause Execution of Death to be done upon the Freemen of England, according as the major number of any twelve of the members thereof shall judge to appertain to justice.

And thereupon the Respondent doth humbly infer and offereth for law, That the said Act is diametrically contrary unto, and utterly inconsistent with the said Great Charter, and is therefore by the said recited Statute to be holden for none.—That it can with no more reason, equity, or justice, hold the value and reputation of a law (the said Statute before recited being in force), than if, contrary to the second Clause in the 29th chap. of Magna Charta, it had been also enacted, that justice and right shall be deferred to all Freemen, and sold to all that will buy it.

Thirdly, That by the Petition of Right, 3 Car. after premising that, contrary to the Great Charter, trials and executions had been had and done against the subjects by Commissions Martial, &c. it was therefore prayed, and by the Commission enacted, That, 1. No Commissions of the like nature might be thenceforth issued, &c. And that done, 2. To prevent, lest any of the subjects should be put to death, contrary to the laws and franchise of the land.

The Respondent hereupon humbly observeth and affirmeth, That this Court is (though under a different stile) in nature, and in the Proceedings thereof, directly the same with the Commission Martial; the Freemen thereby being to be tried for life, and adjudged by the major number of the Commissioners sitting (as in Courts of Commissioners Martial was practised, and was agreeable to their constitution), and consequently against the Petition of Right; in which he, and all the freemen of England (if it be granted there be any such) hath, and have right and interest; and he humbly claims his Right accordingly.

Fourthly, That by the Remonstrance of the 15th of December, 1641, and the Declaration of the 17th of January, 1642, the benefit of the

\* See this Act, in Scobell's Acts and Ordinances.

laws and ordinary Courts of Justice are the subjects birthrights.—By the Declarations of the 12th of July, and the 16th of October, 1642, the Preservation of the Laws, and the due Administration of Justice, are owned to be the justifying cause of the War; and the ends of the Parliament's Affairs managed by their swords and councils. And God's curse is by them imprecated, in case they should ever decline those ends.—By the Declaration of the 17th of April, 1646, promise was made not to interrupt the course of Justice in the ordinary Courts thereof.—By the Ordinance or Votes of Non-addresses, Jan. 1649, it is assured on the Parliament's behalf, That though they lay the king aside, yet they will govern by the Laws, and not interrupt the course of justice in the ordinary courts thereof.

And thereupon the Respondent humbly intercesseth and sheweth, That the Constitution of this Court is a breach of that public faith of the Parliament, exhibited and pledged in the Declarations and Votes to the Freemen of England. And upon the whole matter, the Respondent (saying as aforesaid) doth humbly affirm for law, and claim as his right, 1. That this Court, in defect of the validity of the Act, by which it is constituted, hath not power against him, or to press him to a further Answer. 2. That by virtue of Magna Charta, the Petition of Right, and the before-recited Remonstrance and Declarations, he ought not to be proceeded against by this Court, but by an ordinary Court of Justice, and to be tried by his peers.

And humbly prayeth, that this his present Answer and Salvo may be accepted and registered, and that he may be tried by his Peers accordingly. ERS. ANDREWE.

The father and second ANSWER of Eus Andrewe, esq. to the honourable the High Court of Justice, presented the 16th day of Aug. 1650.

The said Respondent, with the favour of this honourable Court, receiving and praying to be allowed the benefit and liberty of making further Answer, if it shall be adjudged necessary, in all humbleness for present answer, offereth to this honourable court.

That by the letter and genuine sense of the Act, entitled, 'An Act for establishing an High Court of Justice,' the said Court is not qualified to try a freeman of England, and such the Respondent averreth himself to be, for life in case of Treason.

First, For that, 1. The said court is not constituted a Court of Record, and (but upon Record) cannot at all have that account of their freemen, which kings were wont to have of their ministers of justice.\* 2. The freemen; and

such who are and may be conceived in him, can have no record to resort unto, by which to preserve the rights due to him and them respectively, viz. of

1. A Writ of Error, in case of erroneous Judgment, due by the precedents. (Pasch. 39 Ed. 3, John of Gaunt's Case, 4 Ed. 3, Rot. Par. Num. 13, Count de Arundel's Case, 42 Ed. 3, Rot. Par. No. 23, Sir John of Lee's Case.)

2. A Plea of Auterfoys acquit, in case of a new question for the same fact; the right to which, and the necessity of such record, appears by Wetherel and Darley's Case, 4 Rep. 35 Eliz. Vaux's Case, ibid. 33 Eliz.

3. A being enlarged upon Acquittal, as is the Freeman's due, by the stat. 14 Hen. 6. c. 1. and the Case thereupon grounded: (Dyer, fol. 120, and Abindg. fol. 53, The Year Book of Ed. 6, 10, fol. 19.)

4. A Writ of Conspiracy against those who have practised the betraying the life of the Respondent not to be brought before acquittal, and no acquittal but upon record, as appeareth by the Poulterer's Case, 9 Rep. fol. 55.

This Court is to determine at a day, without account of their proceedings, have power to try, judge, and cause execution, but not to acquit or to give enlargement; so that the innocent are thereby punishable, the innocent not preservable; the injured and betrayed not vindicable; which are defects incompatible with a court of justice, and inconsistent with justice itself, and with the honours of a Christian nation and commonwealth.

Secondly. For that the Members of this Court are by the Act directed to be sworn, 1. Not in *conspetu populi*, for the Freeman's Satisfaction. 2. Not in words of indifferency, and obliging to equality. 3. In words of manifest partiality, viz. 'You shall swear that you shall well and truly, according to the best of your skill and knowledge, execute the several powers given unto you by this Act.'

The Respondent humbly offers, That 1. The Court in their capacity of Tiers ought, in reason, to have been appointed by their constitution, to have been sworn as Tiers in full Court, according to the practice in all equal ways of trial. 2. The Court as Commissioners of Oyer and Teimner, (being authorized by the Act to hear and determine) should in like reason be appointed by an Oath, such as is usual for persons so qualified, as provided by 18 Ed. 3, viz. 'You shall swear, that well and lawfully you shall serve our lord the king, and his people (*mutatis mutandis*) in the office of justice, &c. and that you deny to no

So that: 1. The State cannot upon the Record, and but upon Record cannot at all, have that account of their Freeman, which Kings were wont to have of their Subjects, and States exact elsewhere at the hands of their Ministers of Justice."

\* In Walker's Hist. of Independency this head of objection is thus given:

"For that: 1. The said Court is not constituted a Court of Record; neither hath Commission, returnable into a Court of Record.

'men common right, &c.' Or some Oath equivalent at least to that of a Justice of Peace Dalton, fol. 13. 'I A. B. do swear, that I will do equal right; and according to my best wit, cunning and power, after the Laws and Customs of the land, and the statutes thereof made, &c.' 5. The Court in the capacity of Triers should, in reason, be obliged by an Oath, of as equitable sense as that usually administered to jurors, viz. 'You shall well and truly try, and true deliverance make between our sovereign Lord the king, (*mutatis mutandis*) and the prisoner at the bar; So help you God.'

Whereas when this Court shall, as it is now constituted, have condemned the Freeman the Respondent, or other, by applying their skill and knowledge, to their power, whether justly or not, the oath by them taken is not in the letter broken; as to be exactable by man, though God will probably have a better account. And therefore upon the whole matter premised, the Respondent (swearing as before) offers for law and reason, that the honourable Court the High Court of Justice, is not, by the letter and proper sense of the words of the Act, by which it is constituted, qualified in respect of the pre objected defects to pass upon him for his life, upon a charge of crimination of high treason.

And humbly prays, that this his second answer, and salvo, may be received, and registered, and that he may be tried, as in his former Answer he prayed. *It is ANSWERED*

The farther and third ANSWER of FREDERICK ANDREW, esq. to the Honourable the High Court of Justice, presented the 16th day of Aug. 1685

The said Respondent, with the favour of this honourable Court, receiving and praying to be allowed the benefit and liberty of making further answer, (if it shall be adjudged necessary) in all humblest and present Answer, offereth to this honourable Court

That, First, It is his right (if he must admit this Court to be duly and legally established and constituted, as to then being a Court) to be tried by his peers, men of his own condition and neighbourhood.

Secondly, It is within the power of the Court by the letter and sense of the Act, or at least as being not repugnant to the act, to try him by such his peers, &c.

First, That it is his right to be so, and only so tried, appears by Magna Charta, c. 29. 25 Edw. 1, c. 1 and 2. 25 Edw. 3, c. 4. 25 Edw. 3, c. 2 and 4. 28 Edw. 3, c. 4. 37 Edw. 3, c. 18. 42 Edw. 3, c. 3.—By all which Statutes made in full Parliament, consisting of the head, and all the members actually, as well as virtually, this the Respondent's right is maintainable and demandable, and the contrary proceedings thereunto are to be held for none, and redressed, &c. to be held for void and error, &c. So that, if the Laws and Courts were not obstructed, (in the cases of some sort

of freemen of England) the proceedings contrary to these laws, without a jury of his Peers, were avoidable, and reservable by Writ of Error, as appears also by the precedents vouched by the Respondent in his second Answer.

Secondly, That it is in the Court's power to try the Freeman, and consequently the Respondent, by a jury of his equals; the Court is humbly desired to consider the words of qualification.

The Court is, 1. Required to hear and determine; and so if at all Commissioners, then Commissioners of Oyer and Terminer, and such Commissioners, in their natural construction and practical execution, do proceed against the freemen according to law, by a jury of his equals, and not otherwise

2. Authorized to proceed to trial, condemnation, and execution, &c. But not restrained to the manner of trial, *limitative*, as to trial by the Court's opinion as tryers, *non exclusivè* as to trial *per Pares*, but is left in the manner, as in the judgment it elf, to the opinion of the major number of twelve; and if they shall think fit to try by a jury, it will be no offence against the act, there being no clause or prohibition to the contrary.—And therefore the Respondent humbly claimeth his said right, as consisting with the said power.—And the more to induce the Court to grant him such his right, and the benefit thereof, the Respondent humbly representeth the manifest wrong, and multiplied dishonour done to him, and in him to the Freemanry of England, in the following particulars of then like just right (depending upon such trial to be allowed) if denied him, by this honourable Court.

First, The benefit of

Challenge to the Triers, thirty-five peremptorily, and for Treason *sans number*—(Stamp. pl. Cor. fol. 150. 1<sup>st</sup> Challenge, Poyntz's Case. 32 Hen. 6, Fitz. fol. 26. Allowed Hill. 1 Jacobi to Sir W. Raleigh and Brooks)

Secondly, The liberty of

Seeing, hearing, and counter-questioning the witnesses, for clearing the evidence in matter of circumstance, as well as in matter of fact; which appears to be the Respondent's right by Stat. 1<sup>st</sup> Cor. fol. 163, 164, the statute of 1 Edw. 6, Phil. and Mary, c. 10 and 11. 1 Edw. 6, c. 12

The authority of (the Law's Oracle) Coke 2<sup>nd</sup> Inst. fol. 12, commenting upon the words 25 Edw. 3, c. 2. *Provabement Atiant*, because the punishment was heavy, the proof to be punctual, and not upon presumptions or inferences, or strains of wit, but upon good and sufficient proofs: also by the statute of 1 Eliz. c. 6, 13 Eliz. c. 1.

Thirdly, The being convicted or acquitted by a full, free, and fully-consented verdict. For, 1. A verdict by a Jury passeth from all, or not at all. In the proceeding by voices, a sentence passeth by way of concurrence, with which the Star-Chamber, High-Commission, and Courts-Martial, were branded and con-

denied off Inequality. 2. A verdict passeth upon a Jury before discharged, upon their affairs of estate, or supplies of nature, to prevent corruption of money and power; but as this Court proceeds (if it will proceed by voices), a trial may be had this day, and a sentence may be given at leisure; when the will of those by whom the freeman is prosecuted, be first known.

And upon the whole matter,

The Respondent humbly claims the benefit and right of being tried (if before this honourable Court) *per pares*, men of his own condition, and of his neighbourhood, and that he may hear and see all the witnesses produced against him, *viva voce et aperto vultu*; and may have power, liberty, and time to produce witnesses in his defence.

And (saving as formerly) humbly prays that this his Answer, and Salvo, may be received and registered.

EUS. ANDREWE.

THE SEVERAL ARGUMENTS OF COL. ANDREWE AT HIS TRIAL.

*The First Argument.*

My Lords, and you Gentlemen, Members of this Honourable Court; I have (as becomes me) been attentive to the Charge which has been read against me. It appears in that dress it is put already, (though I presume it shall be clad in other apparel by Mr. Attorney) so specious, and so great as that my friends (if I have any here) begin to fear, the indifferent to doubt and the partial to desire, and join in my condemnation; myself (I hope I am not partial to myself) believe, that it will be no more than the mountain's labour, and when it shall come to be dissected, will prove to be *inane aliquid*; like the apples of Sodom, that however they take the first sense, the eye, as this the ear, do rather foul the fingers that touch them, than satisfy the appetite in its expectation upon them.

My lord, I am at an unusual bar, and engaged in a great cause of a far extendable concernment, my fee is life, and my duty is self-preservation; which in itself were less considerable, if by a precedent of my suffering, the consequence would not prove mischievously epidemical.—I do not wilfully refuse to plead to the Charge, but humbly crave leave to offer my reasons for the suspending of my Plea. And if I be importunate (yet within the bounds of civility) I beg your pardon, and that I may have a full, free, and an uninterrupted hearing.

My lord; When the Jews pressed Pilate to sentence Christ, they obtruded to him that they had a law, and by that law he ought to die. What they thought reasonable to claim, when it served their turn to vent their malice, will be, I hope, warrantable for me to lay hold on in a better sense, for the vindication of Christ, who suffers when justice is a sufferer. We have a law too, and by that law, I ought not to plead, nor to be tried, nor to be judged. The laws of England were not unknown, but mispractised, when the barons fought king John into a consent to the (not new making, but) restoration of the ancient laws.

And Magna Charta [Coke 1st part Instit. fol. 80, 81.] itself is but a confirmation or restitution of the Common Law, and is become the standard by which laws are reducible, and is the foundation of all other acts of parliament. It hath been at no time dismembered; no part abrogated by any repeal. It hath been confirmed above thirty times, and commanded as often to be observed and put in execution. In the Act called *Confirmatio Chartarum*, [25 Ed. 1, c. f.] it is directed to be allowed as the common law in judgment, in all points, by all the Judges and Dispensers of Law, or which have the law to guide. [Bracton 414, 491. Fleta lib. 2, c. 48, lib. 3, c. 3.]—It hath in former ages gained an honourable esteem in the old Books: 'Charta Libertatum communis Libertas Angliæ, Charta de Libertatibus,' &c. these are the Appellations. [Mirror c. 2, 18. Briton fol. 177.]—It was a *Noli me tangere*, and for seeking a reversal or avoidance of it, Hubert de Burgh, was sentenced by the Barons, and the sentence confirmed by king Hen. 3. [17 Hen. 3, Rot. Cla. mem. 1, 2. Pro utrius. M. 1.]—The great Hugh Spencer, in the reign of Edw. 2, was banished, but for rashly counselling against the 'Encounter la forme de la grande Chartre.' [14 Edw. 2.]—And to draw downwards yet one king's reign, and to the point to which I would apply; I find in the 42nd of Edw. 3, this Great Charter was not only barely confirmed and commanded to be kept in all the points, for those are the words; but to prevent any alteration of it, it is enacted, That if any statute be made to the contrary, that shall be holden for none.—By this Magna Charta it is granted, and enacted too; if my Lord Coke say true, who saith it is a Statute as well as a Charter, being made by assent and authority of Parliament; That no Freeman shall be taken or imprisoned, or be disseised of his freehold or liberties, or free customs, or be out-lawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, and by the Law of the Land. We shall sell to no man, nor defer to any man either justice or right. If this be truth and law, which I have in these particulars premised to you; then, my lords, give me leave to take notice, That by that Act by which you are constituted a Court of Justice, you are authorised to try the Freeman of England; not *per pares*, upon or for offences against articles, and the punishment to reach to life, as the major part of any twelve of the Commissioners shall judge to appertain to justice.

Laying these together, a posting rider may read, that these laws are diametrically, and consequently inconsistent. The latter hath its doom inherent by its innate contrariety to the former, and is a building, a superstructure so unsuitable to the foundation, that if it had not a double-edged support, it need no help to be demolished but would fall, I know not whether to say, *sua mox*, or *sua penclitate*.

The constitutions of this law are *gladius*

snatch; and therefore as I am not in opportune place to speak to them, so there is something of danger to speak too freely to them; but my Lord, your lordship, as you are in this place, are (I am sure ought to be) like the escutcheons of princes, with their adopted supporters, Knowledge and Conscience; and if you are, I am confident you will doubt of your commission or warrant to proceed against me, and compel me to preserve an inch of life, by giving away mine and my countrymen's liberty, in condescending to a plea and trial, in this contralegal way, and by power of this act.

*The Second Argument.*

My lord; I shall further beg leave to call to your memory the petition of Right; which was made the business of the Parliament, at the time when it was preferred, and received the royal assent, must never be forgotten by those who hold in esteem the care of Parliaments, and gracious concessions of kings. In the Preamble, or leading part of that Petition, the Statute of Magna Charta is instanced as to this particular, Trial for life by proper courts, with other the laws and statutes, (some of which I have cited, and the rest shall upon another point in their place) and, as it is complained, that proceedings had been by Commissioners Martial, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other laws ought to have been judged; so it is prayed, and accordingly enacted, that no commissions of like nature may be henceforth issued to any person or persons whatsoever to be executed, &c. and this to prevent, lest by colour of them, any of the subjects should be destroyed or put to death, contrary to the laws and franchise of the land.

My lord; 1 The Commissioners Martial were not evil in respect of the persons commissioned, being as this power is to you, so those always given to persons of quality and learning, but the evils of them were their proceedings by their own will and opinion, being themselves the Judges and the Jury, offices incompatible and inconsistent with the people's liberties, by the former laws become their rights. When your lordships shall read the Act by which you now sit, I am confident you will grant this power to be of the same nature, though not under the same name; and consequently in that petition complained of, in supposition that such might be, and enacted against in *Terminis*, that none such should be.

2. For that you are called by the Act, Commissioners, and yet have no commission, but the Act itself; whereas you should, in regard you are not a Court of Record in yourselves, have Commissions returnable at a day, into some Court of Record, where your proceedings might be extant and visible: and as you are now constituted, you have a day prefixed to determine in; but that being come, you are to vanish, and your *vestigia* will be as imperceptible to the times and men to come, as the

trace of a swallow in the air; which is inconsistent with the honour and justice of any kingdom, or any Christian Commonwealth.

For that you have only by this Act, a bare and single power to adjudge, and cause execution to be done, in case you shall judge it to appertain to justice; but you have no power, if you think it appertain to justice, to acquit, and upon acquittal to discharge the person tried, as is the law expressly in my lord Dyer [Read's Case, Dyer, fol. 120, 10 Edw. 4, fol. 19] and in the Year-book of Edw. 4, grounded upon the statute of Hen. 6, 14 of his reign, cap. 1 That Justices of Nisi prius (who are commissary Justices) shall have power of all the cases of Felony and of Treason, to give their judgment, as well where a man is acquitted of Felony, and of treason, as where he is thereof attainted, at the day and place where the inquisition, inquest, and jury shall be taken; and then from thenceforth to award execution to be made by force of the same judgments, which is an acquitted man's case can only be an enlargement.

But, my Lord, you have only power, if you can, to reach my life, in your opinion deserving it, but not to reach me out of prison; so that if you kill me not here with the sword of justice, you must leave me in worse hands, to be buried alive in restraint and want. Which all is against the laws of nature and nations, and particularly of this land, that are all so balanced and poised, as that they have equal regard to the delivery and freeing the innocent, as to the condemnation of the nocent.

And Isidore in his Etymologies says of a law, thus; 'Erit autem lex honesta, justa, possibilis secundum naturam et consuetudinem patrie; loco, temporisque conveniens necessaria, et utilis, manifesta quoque, ne aliquid incautum per obscuritatem capitione continet; nullo privato commodo, sed pro communi civium utilitate conscripta.' And as laws should be, so should courts and the dispensers of laws be.

But, my Lord, if this court must be granted to be a court, yourselves can make no more of it than a Court, *ex parte*, and set up to serve a particular end, with the privation of the common utility and liberty, however ushered in with a preamble of another stile, of preservation of peace, and prevention of war. but Thucydides will tell you, my lord, in his fourth book, That

'Turpius est his qui impia tenent insidiare honesto prætextu, quam insidiosâ malevolentia uti; nam violentiâ videtur aliquid juris habere, propter potentiam à fortunâ datam, sed fraus tantum ab injustitia oritur.'

*The Third Argument.*

But, my Lord, if your lordship be in your judgment and conscience satisfied, that the Act itself, in and as to its constitution, is good and valuable, and empowereth you sufficiently to proceed against me some way; then 'Argumenti ergo ducto, sed non juris ergo concessio,' that it is a Law, or an act, and that

all those Ordinances are out of doors; yet I pray your lordship's leave that I may make evident to your lordship, that you are not hereby constituted a Court capable, in defect of the very letter of the act, to pass upon any man, and consequently not upon me, in matter of life, or where life may be the concernment.

1. For Reason, you are not constituted a Court of Record,\* which is absolutely necessary, having life and forfeiture of lands in your charge.

First, For the State, that they may have an account, (not in their Council-Chamber, but upon Record) what is become of the matter in issue, and of the person put upon his Trial.

2. For the Freeman of England, that in case he be acquitted of the crime wherewith he shall stand charged before this Court, he might at all times resort to the Record, upon any new question for the same fact, in any other Court holding Pleas of that nature, by which Record to plead his *autrefois acquit*, and to make his Defence, as also to preserve his estate, 'Si non legaliter acquitte en le Poulterer's Case 9, R. Bengist demunt acquittal nul req. 'si non de record,' as also my benefit, a writ of Conspiracy.

To come nearer our own times, the like cause to complain, and the same redress is given in the Act [17 Car. 1.] for abolishing of the Star-Chamber; upon the grounds and reasons drawn from these laws; the Innovations and Invasions, upon which (as being fundamentals) was a great part of the substance of the grand Remonstrance, committed to the whole world against the late king by the press: the Charges against the earl of Strafford, and the Archbishop of Canterbury.—The interest of the subject in these Laws was cried up to be so precious, as that it had influence even to the absolving of all old Oaths and the imposing of new, and to bring to adventure estate, and life, and soul, rather than to be usurped, or in the least intrenched upon.—Four several Declarations of the present parliament have entitled the subject to them; and to the benefit of the ordinary Courts of Justice, as their birth-right. They have owned the preservation of them to be the cause of the war, and the ends of their affairs managed by their swords or council; and God's curse is by them imprecated, in case they should ever decline the ends.

My lord; We have the Parliament's word and promise,§ not to interrupt the course of justice in the ordinary Courts. And in the Ordinance of Non-Addresses to the late king, they say, 'Though they lay the king aside, yet they will govern by the laws, and not inter-

rupt the course of justice in the ordinary courts thereof.'

My lord; I am entitled to all these Laws, and these Promises and Declarations: and if this Court proceed against me, those notwithstanding, (the ordinary Courts of Justice being open and unobstructed) I am robbed, and divested of them all, and in me the Freemanry of England are all dispoiled, at the parliament's will (according to this precedent) despoilable, and may with Mr. Stampford, in his Pleas of the Crown, take up this saying, it will serve for a lamentation, 'Miseri servitus, est. ubi jus est vagum nunc incoquitum.'

Attorney-general *Prideaux*. Take heed you scandal not the Court.

#### *The Fourth Argument.*

Thomas Aquinas (who, though a Papist, is not the less worthy to be vouched, where not Religion, but policy, is the thing in question) saith, That 'lex est regula et mensura actuum' 'agendorum vel omittendorum,' not 'Actorum and Omissorum.' And St. Paul says, Rom. vii. 7. 'Concupiscentiam nesciebam, nisi lex diceret non concupiscas.'

My lord; your authority is in two several places to proceed against, as Traitors, such who have broken articles before they were made, viz. Whosoever hath, or shall plot, contrive, or endeavour, &c.

Whatsoever Officer, &c. hath, or shall desert their trust, &c. shall die without mercy.

And thus, my Lord, the end of laws and law-making is perverted; which are not merely to punish offenders, but to prevent offences, which amongst Christian men was never otherwise done, but by way of promonition; by laws first interdictory, and then subpenatory.

The earl of Strafford did (and very reasonably) take it unkindly, and so expressed himself upon his Trial, that a neglected law should lie moulding amongst old parchments 200 years unused and unexercised, and be at last brought out to measure his last past actions by; or to use his own words, "To be like a coal raked up in the ashes, to be at pleasure blown into a flame, and to make him and his family the first fuel to feed it." Truly if he had seen these Articles (as he felt after somewhat like them), he would have cried out, and but modestly enough, that it is not mending of the fault, but the destruction of the person, which is manifestly designed in these Articles of Retrospection.

Disusage of law, is some excuse for him who falls into a transgression; but the non-existence of a law is a justification of the greatest offence.

And, my lord, as you are to look backward to actions done before the law made, so you are to take cognizance of offenders against two former Acts, which make the crimes therein certain in the matters of fact, fault and punishment; and if they be laws, they must be deemed part of the laws of the land, and desirable and dispensable by the ordinary courts

\* *Wetherel and Dailey's Case*, 50. 1102.

† *Articles contra Strafford*. Ar. 1, 2; partes 1. 14 part. secunda. See vol. 3, p. 1385.

‡ Declaration Dec. 15 1641. Jan 17, 1641. July 12, 1642. Oct 3, 1642. See 2 Cobb. Parl. Hist. 972. 1042. 1413.

§ Declaration April 17, 1646, Jan 1648. See 3 Cobb. Parl. Hist. 455, 832.

of the land, in cases criminal : for extraordinary courts of that kind, have long since (even by the Parliament, of which this is the surviving part) been denied.

And although it is true, that when some particular fact is committed by some one or more particular persons against the laws criminal, it often falls (and properly enough) that especial Commissions of Oyer and Terminer are for some urgent and expedient reason issued\* to try the matter and men; yet those commissions do not restrain the commissioners to proceed only against those persons, and upon those particular crimes, which the common fame hath rendered *hac vice*, to be triable; but run in general terms, and with general enablement to try all manner of Treasons, Felonies, &c.

And the Reason is, 1. For that it might possibly fall out, that a grand Jury will not find the bill against John a Stile; and if not, the commissioners are sent down without their errand, if only directed to try J. S.

2. It may fall out, that where there are Treasons or Felonies committed by J. S. they may be accompanied with misprisions and misdemeanors in J. O. And if the particular crime of Treason, and the particular person of J. S. be only authorized to be enquired of, then the commissioners can do but half their work: and therefore this commissary power of yours, my lord (the ordinary courts being not obstructed, and you limited to particulars), is so far against the common law and usage, that it is against common and vulgar reason; and (pardon that I must say it) savours more of a snare, than of a law; and more of a warrant of arbitrary execution, than of an enablement, to and for a judicial and legal proceeding or trial.

#### *The Fifth Argument.*

My lord; In all courts of justice, as there is supposed to be an equality intended to such as shall fall under their cognizance and inquiry, which is a principle of morality innate, as well as a practical policy; so there have always in this nation, at least beyond memory, or indeed record to the contrary, been certain Oaths obligatory, and of indifference administered to persons either enquiring of, or passing judgment against, or upon the subjects in all cases whatsoever. And the same thing is but necessary in your lordships and this court to be done (if at all you will proceed in so weighty a matter as life), against which I make this exception.

1. If you are at all sworn, you are not sworn *in conspectu*; and if you will be my Jury and my Judges also, I ought to have satisfaction that you are so sworn. Had you been only my Judges, and constituted after the ordinary manner, and to ordinary ends, I would have taken your being sworn for granted.

2. If you are sworn, and to no other words of Oath than what are comprized in the Act (which myself and all men else will easily believe you are not), then you are not sworn to any manner of equality.

The Words are, You (a) shall swear, that you shall well and truly, according to the best of your skill and knowledge, execute the several powers given unto you by this Act.

I beseech your lordship, (b) that I may compare these words with the Oaths of Judges in England, when it was a kingdom.

The words pertinent are only these, 'You (c) shall swear, that well and lawfully you shall serve our lord the king, and his people in the office of justice, &c.'

And that you deny to no man common right, by the king's letters, or none other man's, nor for none other cause, &c.

I (d) A. B. do swear, that I will do equal right, &c. according to my best wit, cutting and power, after the laws and customs of the land; and the statutes thereof made, &c.?

My lord, these will concern you as my Judges, to consider how little the stiles agree, and how far your Oath is in respect of these unobignatory, and consequently unsatisfactory, to the persons which are or shall be concerned.

1. As to the first, yours contains no such words of equality.

2. As to the second Oath, yours hath such words as skill and knowledge, holding some resemblance with those of wit, cunning and power. But, my lord, if your words were as well ushered, and as well paged as those, it were some satisfaction, viz. 'To do equal right, according, &c. After the laws and customs of the land, and the statutes thereof made.'

My Lord as you are my triers also, as well as my Judges, I beseech you to observe the Oath of a Juror, and the difference in sense (in letter, I know, for the dignity sake it ought to differ).

You (e) shall well and truly try, and true deliverance make between our sovereign lord the King, and the prisoner at the bar, &c. I presume it is still the same (*mutatis mutandis*.)

Truly, my Lord, when I look upon your enablement to try the matters and persons, which, and whom you are to try: you have power to destroy, and not to save; though to spare, yet not to acquit, or discharge; and your obligation by Oath to execute that power, according to your best skill and knowledge. I must needs say, and it is apparent, that when you have destroyed me, you have discharged all the duty that man can exact from you (though God will have a better reckoning), and instead of being tried by sworn Jurors, and adjudged by sworn justices, myself and all who are or may fall into my condition, are to be tried by our sworn adversaries, I might have said sworn enemies: and we cannot in reason expect more justice, than when the son lays the wager, the mother keeps stakes, and the father is judge, in a point of controversy. More and better

(a) The Oath of the Commissioners.

(b) 18 Edw. 3.

(c) Oath of Justices.

(d) Dalton's Justice of Peace, fol. 13.

(e) Oath of a Juror.

you may do more or better we cannot by any light of reason expect.

*The Sixth Argument.*

But, my Lord, if all this be but a wind against a rock, and move you to no declining of the exercise of your power, though against my right; yet certainly, my Lord, where your power and my right may be consistent, you will not stretch your power to the taking away my right; but rather by giving me my right, magnify your power.

This I may reasonably expect. It is my right (granting you to be my judges), to be tried by my peers, the good men of my neighbourhood, and it is in your power (if your power be not inward), to try me so.

That this is my right, I must revisit (*f*). *Magna Charta*, 'Nisi per legale iudicium parium suorum.'

The law of Ed. 1. having confirmed the great Charter, (*g*) saith, 'And we will, that if any judgment hereafter be given contrary to the points of the Charter aforesaid, by the justices, or by any other our ministers that hold plea before them against the points of the Charter, it shall be undone and holden for nought.' And upon this very Law or Clause, a writ of error was brought by the (*h*) earl of Lancaster, for the misattainder of his brother, whose heir he was; and in that the points were two, and upon them both, judgment given for a reversal.

1. Quod non fuit araniatus et ad responsionem positus tempore pacis, eo quod cancellaria, et alia curie regis fuerant aperta, in quo lex fiebat unicuique prout fieri consuevit.

Attinctus.

2. Quod condemnatus sive adjudicatus fuit absque araniamento seu responsione, seu legali iudicio parium, contra legem, et contra tenorem *Magnæ Chartæ*.

The like reversals, and upon the like reasons, have been had, In the (*i*) count de Arundel's case. In sir John of Lee's Case, It is provided, That no man from thenceforth should be attached by any accusation, nor forejudged of life, nor of limb, nor his lands, &c. against the form of the great Charter, and the law of the land. (*k*)

My Lord; Our fathers saw a Parliament (and reaped the blessing of it), which was called *Benedictum Parliamentum* (which hath circumscribed the loose interpreters of treasons to a standard, and not left it to be *individuum vagum*); and there it is said, that persons guilty of High-Treason (and my charge is not for less) must be provably attaind of open deed, by people of their own condition.—And again it is

(*f*) *Magna Charta*, 9 Hen. 3. 29.

(*g*) 25 Edw. I. cap. 1 and 2.

Pasch. 39 Edw. 3. John of Gaunt's Case.

(*i*) 4 Edw. 3. Num. 13. Rot. Parl. 42

Edw. 3. Num. 23. Rot. Parl. 5 Edw. 3.

(*k*) 52 Edw. 3. 2 cap. 4 ejusd.

accorded, assented and established, that from henceforth none shall be taken by petition, or suggestion made to the king, or his council, unless it be by indictment, or presentment of his good and lawful people of his neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; Nor (*l*) that none be ousted of his franchises, or of his freehold, unless he be duly brought to answer, and fore-judged of the same by the course of law; and if any thing be done against the same, it shall be redressed, and holden for none.—It is assented and established (for the good governance of the Commons), that no man be put to answer without presentment before Justices, or matter of record, or by due process and writ original, according to the old law of the land; and if any thing from henceforth be done contrary, it shall be void in law, and holden for error.

My Lord; That it is my right to be tried by a Jury of twelve men *de vicineto*, is evident; and it is as evident, that if you otherwise proceed with me (if law were not out of fashion), you would but weave Penelope's web, and one day's judgment would be unraveled by the next day's writ of error.

But after-games for life are dangerous; and for estate, I have no great cause to be solicitous: but my right is my duty, to preserve, as in relation to myself, and my honour to keep it if it may be, from being in my precedent taken also from my countrymen, the Freemen (if any such be now) of England, who have equal reason, though they may be wanting (some of them) of the same reasons wherewith to defend it.

That your Lordship may proceed by Jury, for aught is said, or contained in your Act to the contrary;

1. I pray consider the before-recited laws are all unrepealed; and therefore if this law intend to oppose those laws, it should have repealed them, or at least have afforded a slight *Non-obstante*, or have given the subject the comfort of a *har vice tantum*, that we might not have thought ourselves robbed of all, but only plundered of a part of our right for necessity and experience sake, or at least have given us the favour of the earl of Strafford's Act, that it should never be drawn into example: but I am sure in this Act, that proceeding against him is super-exampled.

2. I desire you would consider your qualification; you are made commissioners, and that of Oyer and Terminer, and those are not proceeders in their own proper, natural and habitual constitution and practices, upon and according to their own judgments in matters of fact: you are in these words, viz.

Required to hear and determine, &c. constituted Commissioners of Oyer and Terminer.

3. You are authorised to proceed to Trial, condemnation and execution, &c. but you are not restrained to the manner of such proceed-

(*l*) The like in effect in 28 Edw. 3. 3. 37. Edw. 3. 18. 42 Edw. 3. 3.



ings to Trial exclusively, as to trial *per pares*, but left to do the manner of the Trial, as well as the judgment or execution, as you, or the major part of you, or twelve of you shall judge to appertain to justice: And if such major part shall think fit to proceed by presentment and Jury, doubtless such your proceeding is no Premunire against the power given you by the Act; but it is justifiable to fall within the letter of the Act, and that without a strained construction.

4. And if when you may lawfully (I mean by your own law, if *Argumenti ergo*, it be granted a law) try me by a jury, and will not; then, my lord, pardon me, that I must aver, that you take from me, and in me from the commonalty of England, three great privileges, franchise and rights; to which I and they are, by the known, ancient, and unabrogated, unrepealed, and constantly practised laws, entitled; which will be neither equitable nor honourable for you to do.

1. You take away the benefit of Challenge, which I might make to a jury or jurors.

And that is contrary to my right, which is given me by the (m) Common Law, *in favorem vite*, to challenge in case of High-Treason, for I go to no less) thirty-five peremptorily, and for reason of challenge sans number.

This was judged in 32 Hen. 6, abridged by\* Fitz-Herbert, fol. 26, *per challeng.* where eight Jurors were sworn, and the rest challenged, a new return made; and those eight returned, and though formerly allowed and sworn, yet challenged, and adjudged good.

The like allowed in Hil. 1 Jac. in the Cases of sir Walter Raleigh and Brook.

If this benefit were allowed me, my Lord, to except or challenge the whole Court, who are in number and quality my Triers, as a Jury are, I should not need to be peremptory in my challenge, being furnished with abundant reason.

[Here he was interrupted by Keeble, who said, those Statutes and Cases were out of date now.]

My lord; A jury of Middlesex will be no more nor less, if what I am accused of, to have endeavoured, should take effect; and therefore am not less concerned: I cannot say the same of the Court (or if I should, I should not be believed,) and he that but whispers against Diana at Ephesus, makes all the craftsmen his enemies.

2. The second benefit and right, which by denying me a Trial *per pares*, you take from me, is the benefit of seeing, hearing, and counterquestioning the witnesses produced against me; which, in such way of trials, ought to be *viva voce*.

That such is the law, † Mr. Stamford avereth in his Pleas of the Crown. And,

(m) Stamp. pl. Cor. T. Chaleng. fol. 150.

\* Puyning's Case.

† Stam. P. C. fol. 163, 164, Stat. Philip and Mary 1, and 2 cap. 10.

In Treason, two sufficient witnesses by the Statute of Edw. 6, are requisite; sufficient in relation to their quality, and to the fulness of their testimony.

Sir Edward Coke 3 Inst. f. 12. (an Author as authentic as any) put this for law in his expositions of the words in the Statutes for Treason, 'Provably attain'd;' because the punishment was great, the proof should be punctual; not upon presumptions or inferences, or strains of wit, but upon good and sufficient proofs. And this he makes good by the authority of † Stamford, and the several statutes of Philip and Mary, and of queen Elizabeth, and of Edw. 6.—Now, my lord, an evidence either taken in writing, as the person will voluntarily give it, or cautiously taken as the examiner will ask it (who is not sworn to take it indifferently, no more than the framers of the questions are to propound them fairly,) may be a seeming fair, apposite, and a full testimony; or concerning the person giving testimony, or concerning the *modus*, the *ubi*, the *quando*, &c. the whole laid together may prove either nothing, or a malicious thing. ||—The case of sir Thomas More, Lord Chancellor, accused for bribery, is common; and I hope, if mine have fair play, it will prove no worse.

3. The third and last right and privilege you take from me, is the main of all the rest, and to the making of which (as it should be made up) all the rest are but conducing, and leading; that is, of a fair Verdict.

My Lord; By a Jury a verdict passeth forth all, or not at all; and one knowing and conscientious man may preserve that innocent man, whom eleven either ignorant or careless men would destroy. This Court's sentence is to be stated by number of voices, and some of them possibly not judging their own judgments, but concurring where their opinion of another's judgment shall lead them; which, as it was the great evil of the late court of Star-Chamber, so wheresoever it is used (in Trials of life especially) it is and can be no other than an evil.

My lord. By and from a Jury a verdict passeth before their discharge upon their necessary affairs, nay affairs of nature; and therefore they will give it both the righter, because their evidence is fresh in memory, without the intervention of other matters, as also for that they are without opportunity to be perverted by money or friendship. If this Court receive

† Stam. P. C. 164, 89, 1 Ed. 6, cap. 12. 1 and Philip and Mary, 10, 11, 1 Edw. 6, and 16 Eliz. 1.

|| Bernard and Pitts, witnesses against col. olm Andrewe and sir John Gell, were apparently suborned by Bradshaw and sir Henry Mildmay against them, and good proof offered in the Court that they were both flagitious men, of scandalous life and conversation: both Bernard and Pitts were set to work to betray Andrewe and Gell, for which Bernard had 300*l.* and a troop of horse conferred on him. See Walker's History of Independency, p. 29, 34.

the evil to-day, they may at any time (before the 29th of September next) give their sentence; for *vere dictum* I never expect but from a Jury: and in the mean time, how much their own affairs may put the remembrance of me out of their heads, and how much the State's power may put my safety out of their hearts, I have just cause to suspect. For, fear I will not, being resolved never to be in love with that life which the Common Law of England cannot protect; and had rather die the Law's Martyr, than live the State's Slave.

*The Close.*

My lord; I have said; and now it only remains that I tell your lordship, what I desire you to take into consideration what I have said; and that you would not suddenly, but deliberately give your judgment, whether I ought to plead before you as judges, and to the charge in the Articles, and not in a Presentment or Indictment? Whether to be tried without a Jury, and condemned upon evidence unseen? Which this is, and I desire it may be recorded. As I do not now wilfully refuse to plead or answer, but offer my reasons for the suspension of my Plea, until your judgment in the points be known and pronounced; so, if I be in them over-ruled, I shall then give such Answer to the Charge, as shall become a man in my condition.

*Fiat voluntas Dei, modo in ruinâ meâ.*

RUS. ANDREWE.  
3. 7. 2. 1650.

Here the Attorney-General *Prideaux* put a stop to Mr. Andrewe, telling him; that the Court was not at leisure to take notice of those Law-Cases, but of his confession; 'That he had an affection to act, though nothing acted, was sufficient Treason, and for that affection he deserved death.' And thereupon the Court pronounced Sentence against him, That he should be hanged, drawn and quartered: but on his Petition to the Parliament, an Act passed authorizing Commissioners of the High Court of Justice to issue their warrant for the beheading him according to this Petition.

*Col. Andrewe.* If I be over-ruled by the Court, that I must either answer or be sentenced for my wilfulness: then I move that I may have a copy of my Charge, and a day assigned me to deliver my Answer under my hand. Upon these Reasons: 1. If the Court proceed upon Articles, they cannot in reason conceive that I can plead the general issue to particulars; for in so doing, in case I be convinced of any one Article, I shall receive the doom of all. 2. For that *de facto* some of the Articles may be true, yet *de modo* they may not be available against me; and upon the general issue, I shall not be received to qualify fact with circumstance, and so instead of being allowed the freedom of my defence, which is allowed to every thief, in Newgate, I shall be tried and snared by such confession or proof, as will serve the turn of my prosecutors, and

not preserve myself, by making myself and actions understood.

The Articles are of several kinds and crimes; and as one single Plea will not be applicable to them all, so it is but requisite that I have a copy of them, to give thereby to each one its proper Answer; which though in Indictments is not allowed, yet in this way of proceeding was never denied in the most arbitrary courts. The Council-Table gave a Charge, and received Answer in writing, in cases of Contempt against themselves or commands. The Star-Chamber afforded the Detendant a Copy of the Bill, and liberty to examine and cross-examine witnesses, in case the fact charged were denied by the Answer. The High-Commission the like, by their Articles and Proceedings upon them. My Answer, if not in writing, may either not be understood, or misapprehended, or mis-set down by the Clerk to my prejudice.

If this be denied me, then I must conclude that they intend to wipe off my head, with the smooth-glazed sword of pretended justice; and must apply myself to my memory, in reference to the Charge, and shall hear it read, which by my own knowledge of what has passed between the State and me, I may conjecture; and therefore prepare these following Heads to help my memory, which in a case of so much concernment, is not totally to be relied upon.

First, As to what may be alledged against me in general terms, as a disaffected person, an oppugner of the State, or otherwise, &c. There are two things which draw subjection, and oblige persons to a commonwealth. 1. Protection in the State. 2. Personal engagement, or fealty in the subject.

(1.) Protection I have received none, but stand in the condition of a proscribed person. 1. Estate (if any) sequestrable, and not permitted by the laws of the nation to vindicate it. 2. Calling taken away, which the Turk would not have done, had he been conqueror. 3. Dwelling not permitted where I can subsist, but where I may be obnoxious to want, and to the State's infliction of punishment, when they shall take occasion to repeat upon me any thing they shall call a crime, in reference to my past actions for the late king and my sovereign. 4. Right I can have none, unless I will damn my soul to preserve my estate, or repair my wrong by a contra-legal and contra-evangelical engagement.

This was sufficient reason, owned and justified by the Parliament, for their substruction of obedience, *ἡ βασιλεὺς ἡ ὑπεροψιδεμένη ἀδελφία*, by their Declarations and Ordinances\*.

(2.) Fealty or personal engagement, I have given none, viz. 1. I have not taken the Protestation of May, 1642. 2. I have not taken the solemn Oath and Covenant; yet if I had, I might have justified my actions by them. 3. I have not taken the Negative Oath, because

\* Declar. 17 April, 1646. Ordinance of Non-Addresses, in Jan. 1648.

my Oath of Allegiance (from which no man can absolve me) is a negative to that, &c. 4. I have not taken the present Engagement, much more against my Oath of Allegiance than the Negative Oath.—If I had had so little conscience as to have taken them, I would have had so much as to have kept them; and the State cannot in reason expect from me, or any other, that we should take a second, when we see no conscience made of keeping the first; nor to take a third, the first and second being broken, without other dispensation than power, which, like Alexander's sword, cuts the Gordian knot which it cannot untie.—Neither hath any man assurance, if he should take the last Engagement, that he should have liberty to keep it longer than the fancy of the State held to the now new fashion of government.—And therefore I stand clear as a down-right subject of England, to stand or fall by the Common Laws of England; and if they will deny me that, they deny my Birth right, which is equally righteous, and no more just, than to deny me my estate, my calling, my abode, my means of right.

Secondly, As to my Action at Linton, I justify myself. 1. By the late King's Commission, which my accuser knows I had, and under which he was by the same king constituted my major. 2. What was done, was so done, when he who gave me the commission was in being, and oppressed by injurious imprisonment; and what I did, was in order to his enlargement from his thralldom, and restoration to his lawful power; which was that to which my duty as a subject, by my Oath of Allegiance did bind me in general terms, and the duty of my qualification laid me under a particular obligation.—It was done before the now reputed Parliament were, or pretended to be the supreme authority of the nation, or had assumed the power of government, or were framed into a state: and consequently I am not answerable to them for any opposition to them, farther than the common law binds to Parliaments without their head and hand, or defective in their members; and as to such offence (if it be one) this Court is not qualified to take any cognizance.

Thirdly, As to the design concerning the surprise of the Isle of Ely, it was but a bare discourse or communication, and no formal design laid, agreed unto, nor person engaged in it, so much as by promise. And in cases of Conspiracy against the lives of kings, there were some statutes made, that very words and communications should be reputed Treason; but all repealed or expired, and not thought fit by wisdom of law-makers (having indisputable power to make laws) to be revived since the

days of queen Mary, notwithstanding those very many Treasons hatched and designed against queen Elizabeth, and king James, &c. If, in the highest point of Treason, communication be not Treason against lawful princes, certainly an affection, where the offence (such as it is) is of a far inferior nature of itself, so it had a far inferior object, or subject, concerning whom such discourse was holden.

Fourthly, As to my supposed corresponding with the king, the lord Hopton and the earl of Cleveland (if true) it was so long since, as that it falls not within compass of this Court's commission to try, being confined to infant matters of a year old, and my Charge not exhibited to the Court of Justice before Monday the 15th of July. My last letter, received from lord Hopton, bears date at the Hague, 18th or 28th of June, and was received in two days into Sussex.

Fifthly, As to the drawing, signing, or sealing of the Engagement, it consists of several branches. That, *de facto*, I did it, and must not deny it, because I have confessed it, which was more than needed to them who knew it without enquiry; for I dare aver, that they had their instrument by them employed and cherished in betraying me to it; and have some years past had a man in my bosom to watch me and my motions, which I did affirm to the Lord President, and he not denied it, but said, it was no more than did become any state to do, who had so much cause to hold an active man in suspect, as they had me, having never come in and laid down the cudgels, but held to my principles, and was ready upon every occasion to take fire.

And this I will prove, if I have legal, or (because that word is worn out of use) fair dealing from the Court. And out of that I may justly infer, what will be visible enough, that it is the State's act, and but my consent, and they in no danger of me, but that I should preserve myself from their new laws; into the lapse of which I was not otherwise, or by any other action, fallen.

As to the parts of it: 1. It consists of an Oath of Secrecy. 2. An owning of King Charles II to be such. 3. A Resolution to endeavour to make him such. 4. A crimination of the State, under the names of Rebels and Opposers, who would not have him to be such. To these, as they are ranked, 1. The Oath of Secrecy hath relation only as to the not discovering the co-engagers in that resolution, and the resolution itself being not treason, the oath of keeping secret that resolution is not greater than the thing resolved. 1. The thing resolved was to endeavour, but not an actual endeavouring. 2. If it were an actual endeavouring, yet it can only be supposed that it must be endeavoured by a war to be levied; and the endeavour to levy a war never actually levied, is not treason against the king, against whom only, and his relations, by our old laws, which are laws, a treason can be committed; and party treason I am not accused for. That a bare intention,

\* 11 Hen. 1, c. 1. That the subjects of this realm are obliged, by reason of their allegiance, to serve the prince for the time being, in his wars for the defence of him and the land against every rebellion or foreign power, within the land or without; and ought not to suffer in life, member, estate or office for so doing.

resolution, or engagement, to levy a war is not treason, I refer myself to my lord Coke, 3 Inst. fol. 14 and 38, who tells us (and he is a man of credit) in his book (printed and allowed for law by the houses, when they were two) that a conspiracy (and this Engagement amounts not to so much, but rather to an intention only to conspire) to raise a war (as hath been said, and so resolved) is no treason by the act of Edw. 3, until the war levied, as within, or to be reached by those words in that law (*Overt Act*); and if it were not Treason in those words in the original, it falls not within the words of the transposition of this new-born law, viz. by any open deed. As to the first and third branches of the Engagement, which are interwoven, I conclude that neither of them, that is to say, neither the Oath nor the Resolution, are Treasons, either within the old or the new laws, either in respect of the persons against whom, or the progress made in the thing itself.

2. As to the owning of Charles 2, it falls not within your law, for that it is not a publishing, proclaiming, or publicly declaring his title. The words of the act are, 'proclaim, declare, publish, or any way promote,' which promoting is matter of action more than a private owning. And this by the oath itself was not to be published, nor could, without publishing the engagement itself, which was contrary to the oath.

And though it may be objected, that the raising the war could not be done, but by publishing his Title, and the Engagement at last; yet that, if it be granted, was no farther than an intent; no more was this publishing, and being not done, falls not within your act.

The crimination of the State is but guessed at by implication (for they are not named) to be incant, and I believe your law reaches only to things literal, and not constructive only; and for the word Rebels, I hope they will not take that to themselves, and the word Opposers is a very innocent expression, and at the worst is all but a scandal.

Lastly, Be this Engagement what it will, yet the terms upon which I signed and sealed it were such, as that it was my act not absolute, but upon condition, and to be undone and avoided, in case of the non-co-engaging of others, by the State's decoy assured to be ready to do it, and at whose instance and for whose satisfaction it was pretended to be desired at my hands.

If the Court proceeds by way of Indictment, then I shall move, that these persons may be confronted, whom, in my Narrative, Examinations, and Letters, I have named, and that I may demand of them, &c. As also, that major Parker may be produced, to be likewise demanded of, as a person by me lately, and since my papers sent to the State, discovered to be of the plot to betray me.

If the Court proceed by way of Articles, and upon Examinations taken against me, I desire, and that is but reason, that I may examine my

Defence, as in all Courts, where such proceedings were used, was allowed. If it be objected, That it was not used in cases of Treason, I answer, it is true; if they hold the ancient way of Trials, not; but if they proceed this way, it is but just; and otherwise the Court are at liberty to use all means, public or private, to catch me; but I have none to defend myself: so that it appears that they seek not to do Justice, but execution.

And whether they be confronted or examined, these questions are to be propounded, either *in voce*, or by Interrogatory; and if by Interrogatory, I must stand upon a fair way of examination, viz. That some one from me, as well as one for the State's behalf, may be present, and set down the Examinations or Depositions; and that I may have a copy of them, as well against me, as for me, as well taken already by the State, or to be taken upon my tuition.

#### *The Questions.*

1. Whether he knows major Barnard, how long? &c. What communication and correspondence concerning me, or my actions held between them? Whether he knew of the supposed design against the life of Ely, and of the late Engagement? How he knew them, and upon what reason, and to what end discovered to him, and by whom?

2. Whether he did inform the state (or any member of the council) of them, and how long he hath so informed?

3. Whether he ever had in his custody the Engagement under the hands and seals, and my letter to sir John Gell? If so, where, and whether not at Gravesend at my being there? Whether he were sent to watch me, and knew of my being there, before my being apprehended?

The same questions, *mutatis mutandis*, to be propounded to Barnard; and likewise to him, and to Benson, Holmes, Asmeij, Smith, as they are named.

4. Whether he did propound in both designs to me, or to him? Whether I sought him, or he me? In what disposition he found me, upon the time by the Act limited for departure? &c.

5. Whether he were read to me in the particulars of persons, confederates, or money, ready to engage and to be advanced; and if not, then to what end he feigned these to me?

6. Whether the letters by him to me produced from Search, and Thatch or Thacher, were true, or feigned; and if feigned, to what end, and by whom set on work?

7. Whether he were set upon me, to watch my ways and motions? And whether he were not promised, or did design unto himself profit for the discovering of me, and such whom I should bring in?

8. Whether I framed, or ever read the said supposed design? Or was to be *de futuro* acquainted with it?

9. Whether he brought, or I sought Benson, or Holmes? And whether confederates with him, or designed upon by him?

10. Whether my engagements were absolute,

or conditional, and what I signified at my departure, and upon Barnard's not coming; and where Barnard was pretended to be, and where he really was? What promise I had concerning the return of my engagement, in case sir John Gell did not engage at Gravesend?

11. Whether copies of letters weekly shewed to me were real or feigned? And if feigned, why pretended to be real?

12. Whether there were really any Kentish, Dorset, or Buckinghamshire men, and who, confederates? &c.

These preparations formerly made in rough Notes, were transcribed and put into form, and finished the 8th day of July, 1650, by God's good assistance; notwithstanding my abundant disadvantages of close imprisonment, and want of books, or advice; and I commit and submit the issue to God, whom I beseech to fortify my spirit, and enlarge my understanding, when they shall come to be made use of; myself resolving to be the law's confessor while I live, and (if called to it) to be the law's martyr, when I die by the hand of the impending violence, under the specious name of justice.

Sed tenas Astræa requirit,—et

Judica me, Domine, ne in futuro, &c.

M<sup>r</sup>. ANDREW.—3. 7. 2. 1650. Domini.

*His Exceptions to his Triers.*

John Hurst, esq. a man who hath had his hand in blood, viz. M<sup>r</sup>. Barn. Hazlegge in a duel, for which arraigned, &c.

A person trying, viz. a Juror, and in this way of Trial he is such, ought to be a freeman, viz. not in person, but in his pre-judging opinion; which he is not, having published that the Respondent was the greatest Traitor in England, and that there was enough under his hand to hang him the Respondent.

Sir William Roe, captain John Stone, two of my Triers, were employed to examine the Respondent, on the 2nd of July, 1650, and brought with them all the evidence against him; and therefore in their capacity of my Triers, by the rule in challenges, they are challengeable, and incapable to sit.

But no regard was had to any of his Exceptions, or any Answer returned to his questions; and he was ordered to be beheaded.

The last SPEECH of Col. EUSEBIUS ANDREW, on the Scaffold on Tower-hill, August 22, 1650.

The Lieutenant of the Tower delivering the Colonel to the Sheriff, said, He had brought him thus far on his journey. The Colonel replied, I hope I shall neither tire in the way, nor go out of it. When he came on the Scaffold (kissing the block) he said, I hope there is no more, but this block between me and heaven. After he had been some while on the Scaffold, he spake to the people as followeth:

Colonel Andrew. Christian Gentlemen and good People; Your business here this day is to see a sad spectacle, a man brought in a moment to be unmanned, cut off in the prime of

his years, taken from further opportunity of doing service to himself, his friends, the Commonwealth, or especially to God. It seldom happens but upon very great cause; and though, truly, if my general known course of life were enquired into, I may modestly say, there is such a moral honesty, as some may be so forward as to expostulate, why this great judgment is fallen upon me? But know, I am able to give them and myself an answer; and out of this breast, give a better account of my judgment and execution, than my judges themselves, or you are able to give. 'Tis God's just displeasure towards me, for my sins long unrepented of; many judgments withstood, and mercies slighted; therefore doth my gracious Father chastise me with this correction, that he may not lose me; and I pray you assist me with your prayers, that this rod may not be fruitless: that when under his rod I have laid down my life, by his staff I may be comforted, and received into glory.

I am very confident, by what I have heard since my sentence, there are more exceptions made against the proceedings against me, than ever I made; my Triers had a law, and the validity of that law is indisputable for me to say against it, or to make a question of it; I should but shame myself and my discretion. In the strictness of the law, something is done by me, that is applicable to some clause therein, by which I stand condemned; the means by which I was brought under that interpretation, of that which was not in myself intended maliciously, being testimony given by persons whom I pity, so false, yet so positive, that I cannot condemn my judges for passing sentence against me according to legal justice; for equity lies in higher breasts. For my accusers, or rather betrayers, I pity, and am sorry for them; they have committed Judas's crime, I wish and pray for them St. Peter's tears; and I wish other people so happy, they may be taken up betimes, before they have drunk more blood of Christian men, possibly, less deserving than myself.

It is true, there have been several addresses made for mercy, and I will lay the obstructions to nothing more than my own sins; and seeing God sees it fit, (I having not gloried him in my life) I shall do it in my death, I am content.

I profess, in the face of God, particular malice to any one of the state or parliament, to do them a personal injury, I had never; for the cause in which I had a great while waded, I must say, my engagements and pursuance in it, hath laid no scruple upon my conscience; it was upon principles of law, whereof I am a professor, and upon principles of religion, my judgment rectified, and my conscience satisfied, that I have pursued these ways; for which, I bless God, I find no blackness upon my conscience, nor have I put this into the bead-roll of my sins.

I presume not to decide controversies, I desire God to glorify himself in prospering that side that hath right with it, and that you may

enjoy peace and plenty here, when I shall enjoy my God.

In my conversation in the world, I do not know where I have an enemy with cause, or that there is a person to whom I have regret; but if there be any whom I cannot recollect, under the notion of Christian men, I pardon them as freely as if I had named them; yea, I forgive all the world, as I desire my heavenly Father for his Christ's sake to forgive me.

For the business of death, it is a sad sentence in itself, if men consult with flesh and blood: But, truly, without boasting I say it, or if I do boast, it is in the Lord, I have not to this minute had one consultation with flesh about the blow of the ax, or one thought of it, more than my passport to glory.

I take it as an honour, and I owe a thankfulness to those under whose power I am, that they have sent me hither to a place, however of punishment, yet of some honour, to die a death somewhat worthy my blood; and this courtesy of theirs hath much helped towards the satisfaction of my mind.

I shall desire God, that those gentlemen in that sad bead-roll to be tried by the High Court of Justice, that they may find that really there, that is nominal in the Act, 'An High Court of Justice, or Court of High Justice,' high in its righteousness, not in its severity: no more clouded with the testimony of folks that sell blood for gain. Father, forgive them, and I forgive them as I desire thee to forgive me.

I desire you now to pray for me, and not give over praying until my last moment; that as I have a very great load of sins, so I may have the wings of your prayers assisting those angels that shall convey my soul to Heaven. And I doubt not but I shall there see my blessed Saviour, and my gallant master the king of England, and another master which I much honour, my lord Capel; hoping this day to see Christ in the presence of the Father, the king in the presence of him, my lord Capel in the presence of them all, and myself with them, and all Saints, to rejoice for evermore.

*Dr. Scudling.* You have this morning, in the presence of a few, given some account of your Religion, and under general notions of words, have given account of your Faith, Charity and Repentance: (then speaking to the standers-by) if you please to hear the same questions asked here, you shall, that it may be a general testimony to you all, that he died in the favour of God.

(To the Colonel.) Now, Sir, I begin to deal with you; you do acknowledge, that this stroke you are by and by to suffer, is a just punishment laid upon you by God for your former sins.

*Col. Andrew.* I dare not only not deny it, but dare not but confess it. I have no opportunity of glorifying God more, than by taking shame to myself; and I have a reason of justice for justifying God in my own bosom, which I have intrusted to yours.

*Dr.* You acknowledge you deserve more than this stroke of the axe, and that a far greater misery is due to you, even the pains and torments of hell, that the damned there endure.

*Col.* I know it is due in righteous judgment; but I know again, I have a satisfaction made by my elder brother Christ Jesus, and then I say it is not due; it is due from me, but acquitted by his mediation.

*Dr.* Do you believe to be saved by that mediation, and no other?

*Col.* By that, and that only, renouncing all secondary causes.

*Dr.* Are you truly and unfeignedly sorry before God, as you appear to us, for all these sins that have brought you hither?

*Col.* I am sorry, and can never be sorrowful enough, and am sorry that I cannot be more sorry.

*Dr.* If God should by a miracle, not to put you to a vain hope, but if God should, as he did to Hezekiah, renew your days, what life do you resolve to lead hereafter?

*Col.* It is a question of great length, requires a great time to answer; men in such straits would promise great things; but I would first call some friends to limit how far I should make a vow, that I should not make a rash one, and so offer the sacrifice of fools: but a vow I would make, and by God's help endeavour to keep it.

*Dr.* Do you wish health and happiness upon all lawful authority and government.

*Col.* I do prize all obedience to lawful government, and the adventuring against them is sinful; and I do not justify myself, whatever my judgment be, for my thus venturing against the present government; I leave it to God to judge whether it be righteous; if it be, it must stand.

*Dr.* Are you now in love with charity with all men? Do you freely forgive them?

*Col.* With all the world freely; and the Lord forgive them, and forgive me, as I freely forgive them.

*Dr.* You have for some late years laid down the gown, and took up the sword, and you were a man of note in these parts where you had your residence; I have nothing to accuse you for want of diligence in hindering the doing of injuries; yet possibly there might be some wrong done by your officers, or those under you, to some particular men; if you had your estate in your hands, would you make restitution.

*Col.* The wrongs themselves you bring to my mind are not great nor many; some things of no great moment; but such as they are, my desire is to make restitution, but have not wherewithal.

*Dr.* If you had ability, you would likewise leave a legacy of thankfulness to Almighty God; something to his poor servants, to his lame members, to his deaf members, to his dumb members.

*Col.* My will hath been always better than my ability that way.

Dr. Sir, I shall trouble you very little farther; I thank you for all those heavenly Colloquies I have enjoyed by being in your company these three days: and truly I am very sorry I must part with so heavenly an associate: we have known one another heretofore, but never to Christianity before; I have rather been a scholar to learn from you, than an instructor. I wish this stage whereon you are made a spectacle to God, angels and the world, may be a school to all about you; for though I will not diminish your sins, nor shall conceal or hypocrite my own, for they are great ones between God and myself; but I think there are few here have a lighter load upon them than you have, if we consider things well, and I only wish them your repentance, and that measure of faith God hath given you, and that measure of courage you have attained from God, and that constant perseverance God hath crowned you hitherto with.—Col. His name be praised!

Here the Doctor prayed with him almost a quarter of an hour, after which the Colonel turning himself again to the people, spake as followeth:

“One thing more I desire to be clear in; there lieth a common imputation upon the cavaliers, that they are papists, and under that name we are made odious to those of the contrary opinion. I am not a papist, but renounce the pope with all his dependencies. When the distractions in religion first sprung up, I might have been thought apt to turn off from this church to the Romish, but was utterly unsatisfied in their doctrine in point of faith, and very much as to their discipline. The religion I profess, is that which passeth under the name of Protestant, though that be rather a name of distinction, than properly essential to religion: but that Religion found out in the Reformation, purged from all the errors of Rome, in the reign of Edw. 6, practised in the reign of queen Elizabeth, king James, and king Charles, that blessed prince deceased; that religion, before it, was defaced, I am of, which I take to be Christ’s catholic, though not the Roman catholic religion.

“Then he turned himself to the Executioner: I have no reason to quarrel with thee; thou art not the hand that throws the stone: I am not of such estate to be liberal, but here is 3*l*. for thee, which is all I have; now tell me what I lack?”

Executioner. Your hair to be turned up.

Col. Shew me how to fit myself for the block.

After which, his doublet off, his hair turned up, he turned himself about to the people, and prayed a good while. Before he lay down to the block, he spake to the people as followeth:

“There is none that looks upon me, though many faces, and perhaps different from me in opinion and practice, but hath something of pity in it; and may that mercy that is in your hearts, fall into your own bosoms when you have need of it: and may you never find such a block of sin to stand in the way of your mercy as I have met with.

“I beseech you join with me in prayer.” Then he prayed, leaning on the scaffold, half a quarter of an hour. Having done, he had some private conference with Dr. Swadling; then he taking his leave of the sheriff and his friends, kissing them, and saluting him next him, he prepared himself for the block, kneeling down, said, let me try the block; which he did. After casting his eyes, and fixing them very intently above, he said, when I say, ‘Lord Jesus receive me,’ Executioner then do thy office.” Then kissing the axe, he lay down, and with as much undaunted, yet Christian courage as possibly could be in man, did he expose his throat to the fatal axe, his life to the executioner, and commended his soul into the hands of God, as into the hands of a faithful and merciful creator, through the meritorious passion of a gracious redeemer. Saying the fore-mentioned words, his head was stricken off at one blow. He died very resolutely.\*

*Vera copia exam.*

\* Mr. Whitlocke in his Memorials, page 473, says, “The High Court of Justice (afterwards) proceeded against sir John Gell, and he was sentenced by the High Court, for Misprision of High-Treason, to forfeit his estate, and to be imprisoned during his life. Page 474. Capt. Ashley was sentenced by the High Court of Justice to have his head cut off, and one Benson to be hanged, for conspiring against the Commonwealth, in the treasonable engagement of, col. Andrewe. Mr. Benson was executed at Tyburn (the 7th of October, 1650,) according to the sentence of the High Court of Justice; but in regard that capt. Ashley only subscribed the Engagement, but acted nothing in it, he was pardoned by the parliament.”

188. The Trial of Mr. CHRISTOPHER LOVE,\* before the High Court of Justice, for High Treason: 3 CHARLES II. A. D. 1651.\*  
 [Published by John Farthing, Citizen of London, who took the Trial in the said Court for Mr. Love, and at his own Request.]

THE Court being set, and called over, the Lieutenant of the Tower was commanded to bring forth his Prisoner: And master Love was brought to the bar. After the reading of divers late Acts of Parliament concerning Treason, master Prideaux, the Attorney-General for the Commonwealth, spake as followeth:

\* Oldmixon gives a short, petulant and false account of this Trial. Neal, in his *History of the Puritans* is more correct.

"The English Presbyterians," says Kennett, "had been startled at the murder of the king and more disturbed at the prevalence of an independent faction in the army. Under the grievances and jealousies, they learned much toward hopes and help from their Scotch brethren, and for their sakes were inclined for the restoration of the king as in covenant with them. This zeal for their own cause carried many of the Presbyterian ministers in London into a correspondence with the kirk, and so into a plot for the king, distinguished by the name of the Presbyterian Plot. This was soon discovered by the vigilancy of the government, and by the forwardness of the men concerned: so Mr. Love, Mr. Jenkins, Mr. Drake, very eminent Presbyterian divines, were seized by order of the council of state, and in order to their trial, were on May 7, brought before the high court of justice; and Mr. Love was first charged with high treason against the state and commonwealth of England, for holding correspondence with the king and his party, and supplying them with arms and money, contrary to an act of parliament in that case provided. He at first disputed the authority of the court, and then insisted upon his own merits in promoting the cause of the parliament; and termed Mr. Jackson a minister from giving in evidence against him: for which obstinate refusal he was fined by the court 500*l.* and committed to the Fleet. At another appearance, June 23, he did at last confess, that the conspirators met at his house for furthering the Scots designs; and that letters were received, and answers were sent from thence; but equivocated in excuses, that he did not do it himself, and that he did not personally act any thing, &c. In short though he had Mr. Matt. Hale for an advocate, and the whole party for solicitors, on July 5, he received sentence to be beheaded; and the day of execution was appointed on the 15th. Before the day, very fervent petitions were presented from himself and his friends, to the parliament, for pardon of his life; which, on long debate, passed in the negative. And on the very day appointed for execution, several

*Attorney General.* My lord, you have heard several Acts of Parliament read, and the offences therein mentioned. My lord, I have here a Charge against Mr. Love, the Prisoner at the bar; and I humbly desire that it may be read. And you may please to take his answer to it, whether by confession or otherwise.

ministers in and about London came with a most importunate petition to the house, praying earnestly, and "in the bowels of Jesus Christ, who when we were sinners died for us, if not totally to spare the life of our dear brother; that yet you would say of him, as Solomon of Abiathar, that at this time he shall not be put to death." Upon which the parliament granted him a reprieve for one month. Within this time, all possible solicitations were used to the men in power; and particular application was made to Cromwell, then in Scotland, who sent back a letter of his free consent to the pardon of him: but the post-boy being seized by some cavaliers, they searched his packet, and with special indignation tore the letter relating to Mr. Love, as thinking him not worthy to live who had been such a firebrand in the treaty at Uxbridge.

"The Council of State and leaders in the parliament hearing nothing from Cromwell, and not finding the ingenious discovery and humble submission which they expected from Mr. Love (after the condemnation of two of his accomplices, Mr. Potter and Mr. Gibbons) they vacated his reprieve, and re-committed him to the High Court of Justice, by whose order he was executed on Tower-Hill with Mr. Gibbons on Aug. 22.

"This blow helped to widen the breach between the presbyterians and the prevailing power; for from this time the Presbyterians were always suspected of loyalty to the king, and the parliament and army were always jealous of them. Aug. 31, was appointed a day of thanksgiving for the success of the parliament's forces in Scotland and against the earl of Derby; and we are told, 'That the ministers who were not of the rigid Presbyterian judgment, were zealous in the duties of the day; but some of the more rigid persons did not think fit to observe that order, but kept it in public, and had their private meetings to pray to God to bless their brethren of the Presbytery and the cause they were engaged in.' And Oct. 24, being kept for a solemn rejoicing over the king's defeat at Worcester, was so much slighted and slovenly observed by some of them, that they hardly escaped a public censure. Though it was the



[The Clerk <sup>is</sup> commanded to read the Charge.  
viz.]

**A CHARGE** of High-Treason, and other High Crimes and Offences, exhibited to the High Court of Justice by Edmund Prideaux, Attorney-General for the Commonwealth of England, for and on the behalf of the keepers of the liberties of England, by authority of Parliament, against CHRISTOPHER LOVE, late of London, clerk; by him preferred and commenced against the said Christopher Love. That is to say,

"That he the said Christopher Love, as a false Traitor and Enemy of this Commonwealth and Free State of England, and out of a traitorous and wicked Design to stir up a new and bloody War, and to raise Insurrections, Seditions and Rebellions within this Nation, did in several days and times, that is to say, in the years of our Lord 1648, 1649, 1650, 1651, at London, and at divers other places within this Commonwealth of England, and elsewhere, (together with William Drake, late of London, mercer; Henry Jermin, late of London, esq; Henry Piercy, late of London, esq; John Gibbons, late of London, gentleman; Edward

Massey, late of London, esq; Richard Graves, late of London, esq; Syllas Titus, late of London, gentleman; James Bunce, late of London, alderman; and other their accomplices, yet unknown) traitorously and maliciously combine, confederate, and consplot, contrive, and endeavour to stir and raise up Forces against the present Government of this Nation, since the same hath been settled in a Commonwealth and Free State, without a King and House of Lords, and for the Subversion and Alteration of the same.

"And the better to carry on and accomplish their said traitorous and wicked Design, he the said Christopher Love, together with the said William Drake, Henry Jermin, Henry Piercy, Richard Graves, Edward Massey, John Gibbons, Syllas Titus, James Bunce, and others, since the death of Charles Stuart, late king of England, who, for his notorious treasons, and other tyrannies and murders, by him committed in the late unnatural and cruel wars, was by authority, derived from parliament, justly condemn'd to death and executed), several days and times, in the respective years aforesaid, at London, aforesaid, and at sundry other places of this Commonwealth, and since this nation

policy of the governing people to make them easy, by granting a pardon upon humble acknowledgment and submission to Mr. Jenkins, Mr. Case, Mr. Drake, and others, who had confessed themselves guilty of Mr. Love's conspiracy. The petition of Mr. Jenkins for his life went high, and expressly owned the authority of the prevailing powers to be from God; for which reason it is said to have been printed here, and reprinted in Holland by order and procurement of the house of parliament, to stop the mouths of all other Presbyterians, and gain the reputation of a divine right to them and their cause."

Lord Clarendon takes two occasions to mention Love, and on both expresses himself very characteristically. Relating the transactions of the Treaty at Uxbridge, he says:

"There happened a very odd accident the very first morning they met at the house to agree upon their method to be observed in the treaty. It was a market day, when they used always to have a sermon, and many of the persons who came from Oxford in the commissioners' train, went to the church to observe the forms. There was one Love, a young man, that came from London, with the commissioners, who preached, and told his auditory, which consisted of the people of the town, and of those who came to the market, the church being very full, 'that they were not to expect any good from the Treaty; for that they came from Oxford with hearts full of blood, and that there was as great distance between this treaty and peace, as between heaven and hell; and that they intended only to amuse the people with expectation of peace, till they were able to do some notable

'mischief to them;' and inveighed so seditiously against all cavaliers, that is, against all who followed the king, and against the persons of the commissioners, that he could be understood to intend nothing else, but to stir up the people to mutiny; and in it to do some act of violence upon the commissioners. They were no sooner advertised of it, by several persons who had been present in the church, and who gave very particular information of the very words which had been spoken, than they informed the other commissioners of it; gave the charge in writing against the preacher; and demanded public justice. They seemed to doubt of it, and promised to examine it, and cause some severe punishment to be inflicted upon the man; but afterwards confessed, 'that they had no authority to punish him, but that they had caused him to be sharply reprehended, and to be sent out of the town;' and this was all that could be obtained: so unwilling they were to discomfite any man who was willing to serve them. This is the same Love, who some years after, by Cromwell's particular prosecution, had his head cut off, for being in a Plot with the Scots against the army, and their parliament."

Lord Clarendon is not quite correct in saying, "This was all that could be obtained." See Whitelocke's Mem. under date Feb. 1, 1644-5: 1 Thurloe's State Pap. 65. 2 Wood's Athen. Oxon, 136, 137, and Love's Apology prefixed to his Sermon, as there referred to by Birch. Kennet adopts and rather exaggerates the misrepresentation of Clarendon. Carte goes farther still. And Oldmixon says, That Love escaped animadversion. He was confined to his house during the Treaty and then discharged. S'Neal's Hist. of the Puritans 197.

was settled in the way of a Commonwealth or free state, as aforesaid, did traitorously and maliciously declare, publish and promote Charles Stuart, the eldest son of the late king of England, to be king of England (meaning this Commonwealth), without the consent of the people in parliament, first had and signified by authority and ordinances to that purpose.

"And further, to carry on and accomplish their said traitorous and wicked design, he the said Christopher Love, on several days and times in the respective years aforesaid, at London aforesaid, and in divers other places within this Commonwealth of England, and elsewhere, together with the said William Drake, Henry Jermin, Henry Piercy, Richard Graves, Edward Massey, John Gibbous, Syllas Titus, James Bunce, and other their accomplices, as aforesaid, did traitorously and maliciously invite, aid, and assist the Scots, being foreigners and strangers, to invade this Commonwealth of England, and adhered to the forces of the enemy raised against the parliament and Commonwealth aforesaid, and keepers of the liberties of England aforesaid.

"And further, to carry on and accomplish the said traitorous and wicked Design, he the said Christopher Love, divers days and times between the 29th of March 1650, and the 1st of June 1651, at London, and other places, as aforesaid, did traitorously and maliciously give, hold, use, and maintain correspondence and intelligence by letters, messages, instructions, and other ways, prejudicial to this Commonwealth, with the said Charles Stuart, son of the late king, and with the late queen, his mother, and with the said Henry Jermin, Henry Piercy, and divers other persons, being of counsel, and abiding with Charles Stuart.

"And further, to carry on and accomplish the said traitorous and wicked Design, he the said Christopher Love, several days and times in the respective years aforesaid, at London aforesaid, and divers places within the Commonwealth of England, and elsewhere, as aforesaid, did traitorously and maliciously use, hold, and maintain correspondence and intelligence with divers persons of the Scottish nation; that is to say, with the earls of Argyll, Lovdon, Lothian, and Balcarrais, and with one Bayley, gent. and divers other persons of the Scottish and other nations, whom he the said Christopher Love well knew to adhere to the said Scottish nation in this war against the parliament and Commonwealth of England.

"And further, he the said Christopher Love, within the times, and at the places before mentioned, did traitorously and maliciously abet, assist, countenance, and encourage both the Scottish nation and divers other persons adhering to them in this war against the parliament; and did send and convey, or cause to be sent and conveyed, moneys, arms, ammunitions, and other supplies, to Scotland, and other places, and to the said Titus, Massey, and others in confederacy against this nation, without special

leave and licence from the parliament of England, or council of state, or the captain-general of the parliament's forces.

"And further, to carry on and accomplish the said traitorous and wicked practice and design, he the said Christopher Love, within the times, and at the places before mentioned, did traitorously and voluntarily relieve the said Syllas Titus, Edward Massey, colonel Bamfield, and one Mason, late of London, gent. and one Sterks, late of London, gent. who then were, and yet are under the power of the Scottish nation, and in arms against the parliament and Commonwealth of England, with moneys, arms, and ammunition. All which treasons, and traitorous and wicked practices and designs of him the said Christopher Love, were and are to the apparent hazard of the public peace of this commonwealth and free state, parliament and people of England, and to the manifest breach, contempt and violation of the laws of the land, and contrary to the form of divers statutes and acts of parliament in such case made and provided.

"And master Attorney-General, by protestation, saving to himself in the behalf of the keepers of the liberties of England, to exhibit any other charge against the said Christopher Love, and to reply to the answer he shall make to the premises, doth for the said treasons, on the behalf of the keepers of the liberties of England, impeach the said Christopher Love as a traitor and public enemy to this Commonwealth and Free State of England: And doth pray that he may be put to answer all and singular the premises; that such proceedings, trial, examination, judgment, and execution, may be thereupon had against him, as shall be agreeable to justice."

*The Clerk.* Christopher Love, you stand charged on the behalf of the keepers of the Liberties of England, by authority of parliament, of High-Treason, and other high crimes and offences against the parliament and people of England: This High Court therefore requires you to give a positive and direct answer, whether you are guilty or not guilty of the crimes and treasons laid to your charge.

*Love.* My lord, before I plead, I humbly crave leave to express myself in a few words to this Court: and afterwards to make humble proposals of what I desire in order to this trial. In the first place being I am this day called to a great and weighty work, in the entrance to it I do earnestly beg the prayers of all them that have an interest in God, that he would carry me through this whole trial with such gravity, godliness, and meekness of wisdom, as becomes a professor and preacher of the gospel; and that he would keep me in this hour of temptation rather from sin than from suffering. Sir, I am this day made a spectacle to God, angels, and men; singled out from among my brethren to be the object of some men's indignation and insultation. By my appearing in this place, I am made a grief

to many that are godly, and a laughing-stock to the wicked.—[Here he was interrupted by the court.]

*Ld. President.* (Mr. Keble.) Mr. Love, how long time do you intend to take up?

*Love.* I will be brief, Sir.

*Ld. President.* We have been calling upon God to direct us and you, and all good people, that justice may be done; and you would glorify God rather than Man, if you would confess, knowing what was done in that great sin of Achan; there was great pains taken, and the whole nation was fain to be examined, and their houses divided; and at last when it came to Achan, you know what Joshua said to him, 'Confess and tell the Truth, and glorify God.' This is that, that if you respect God before man you may now clear yourself, and set forth his glory upon earth; and your next work is to plead Guilty or Not Guilty. For we see that those ways you go, would take up time, and we have taken all into our thoughts before-hand.

*Love.* I do not desire to protract time, but I would not lie under a prejudice.

*Ld. President.* When you go out of your way, we must help you; and know, if any be under a prejudice here, their prejudging is rather in mercy than in prejudice to you.

*Love.* I hope you will not be more severe to a minister, than you were to lieutenant-colonel John Lilburne. When you were at the Court at Guild Hall, at the Trial of Lilburne, you gave him the liberty of two hours to plead, before he pleaded Guilty or Not Guilty.

*Ld. President.* To a Minister! You say well; but I tell you, we do more to a Christian than to a Minister; and we are all Christians, and your ministry is but an office; and therefore what Mr. Lilburne had, it was the favour of the Court then; but time is spent, and pray do not you follow that now.

*Love.* Whereas your Lordship is pleased to urge the Case of Achan to me, if my case were the same as Achan's was, I should do as Achan did, confess and give Glory to God; but Achan's was a peculiar and extraordinary case, and therefore I pray it may not be laid to me. God was the informer and discoverer, and God did by Lot discover Achan to be the man.

*Ld. President.* Will you plead?

*Love.* I desire liberty to speak a word. I had not diverted my discourse, but upon your lordship's words.

*Attorn. Gen.* My Lord, I hope he will be so ingenuous as not to be long.

*Ld. President.* Take this in your way, Mr. Love, God is at present here, as he was in the Case of Achan. Go on.

*Love.* Sir, by my appearing in this place, I am made a grief to many that are Godly, and a laughing-stock to the wicked, and a gazing-stock to all; yet, blessed be God, not a terror to myself. Sir, I am, as Jeremiah was, born a man of strife and contention: Not actively, I strive and contend with none; but passively, many strive and contend with me, yet I trust God will make me, as he did Jeremiah, an iron

pillar and brazen wall against those that do oppose me, that I shall not be dismayed at their faces, lest I be confounded before them.—Strange suggestions against me are generally received; and great opposition strongly maintained: And in this condition no man dare stand by me! But God stands by me, and strengthens me.—[Here he was interrupted again.]

*Ld. President.* Sir, come to the business in hand.

*Love.* I beseech you, Sir, spare me: You gave Mr. Lilburne more time.

*Att. Gen.* My Lord, when he shall come with such speeches that are nothing to the business in hand! My Lord, he instances in Lilburne's Case: You know that debate; it was in relation to a narration.

*Love.* Sir, it was the narration of his doings and sufferings, that he might not be misrepresented to the Court.

*Att. Gen.* You know you are a minister: And if it be your purpose to spin out time, to think to ingratiate yourself to the people, it will not do. My Lord, this is a court of justice, that proceeds according to the established laws, and laws that have been read to him. Mr. Love is a minister; and had he applied himself to God, as he might have done, he need not have been brought hither, if he had not gone that way he did. But, my Lord, I desire he may go on to the charge, and give his answer to it. My Lord, before we have done, we shall have many occasions of discourse between him and I.

*Love.* I beseech your Lordship allow me that favour that you allow to every one you try, that I may not stand under misrepresentations to you, who are my Judges.

*Ld. President.* Are not we of as much credit as you? Are not we judged ministers as well as you, and more than you? And I tell you, that which you require, we have already done, and wish you as much happiness as to our brother: And for you to spend time about that which is nothing to the business, it must not be suffered.

*Att. Gen.* My Lord, let the constant known laws of the common-wealth of England be observed, as well as other laws, of which that is one, that he ought not to speak any thing till he hath pleaded Guilty, or Not Guilty. My lord, I desire to take my course. I do not make speeches against him, to misrepresent him to you, otherwise than he stands charged. And, my Lord, I would not have him to clear himself till he come to the trial, whether he be not accused justly. It is not my nature, but the duty of my place; and the duty of his place, as a prisoner, is to plead, and to put himself upon trial. That being done, there will be occasion enough for him to plead his own innocence. My Lord, to take up two hours time in talking of that which is not material, should not be.

*Love.* I insist upon that liberty that Mr. Lilburne had.

*Ld. President.* He did plead first.

*Love.* No, my Lord, he did not plead first: and I have much to move before I plead.

*Ld. President.* You can say nothing till you plead.

*Love.* My Lord, I desire not much time.

*Att. Gen.* My Lord, let the time now insisted on be what time it will, Mr. Love will have time to speak for himself; and it is so far from being to the point, that it is trifling; And this rather makes him seem guilty, than it gives him any acquittance.

*Love.* Prove me guilty first, Sir. Sir, do not prejudice me.

[Then command was given to read his arraignment.]

*The Clerk.* Christopher Love. You stand charged, on the behalf of the keepers of the liberties of England, by authority of parliament, of High Treason, and other High Crimes and Offences, against the parliament and people of England; This High Court, therefore, requires you to give a positive and direct answer, whether you are Guilty or Not Guilty of the crimes and treasons laid to your charge.

*Love.* I refuse not to plead; but I beseech you, give me leave to speak before I answer.

[Love having a Paper in his hand, the Judge said,]

*Lord President.* How many leaves is it?

*Love.* But two or three; and if this Court be more strict and severe to me, than that was to Mr. Lilburne, I cannot help it. What I shall say, shall be something in general: and I beseech you, give me leave to speak to it.

*Attorney General.* Sir, not before you plead.

*Love.* Yet I have this liberty, that when Matter of Law ariseth in the Indictment, to make a motion, and to move for Counsel, and to shew the illegality of it; and though I confess I am extremely ignorant of the law, yet I understand, that after I have pleaded, I am not capable of counsel.

*Lord President.* You are mistaken, Mr. Love.

*Love.* I suppose I am not mistaken; for in the third part of Judge Coke's Institutes I find it thus: 'The Prisoner, when he pleads Not Guilty, whereby he denies the fact, after the Plea of Not Guilty, can have no Counsel; but if he have any Matter of Law to plead before, he may urge it.'

*Lord President.* He pleads he is ignorant of the Law, and yet can make use of it.

*Love.* I am to plead for my life; and I am to use scripture, law, and any other lawful means to save my life. Paul did plead the Roman law.

*Lord President.* Some of us know as much of Paul and Scriptures as you do.

*Love.* Sir, I make no comparison. Then Mr. Love reads out of Coke's Institutes: 'The safest way for the party indicted, is to plead upon his Arraignment the special matter for the overthrow of the indictment.' And this must be done before I plead. 'And to require counsel for the pleading thereof, which ought to be granted; and to require a copy of so

'much of the Indictment, which is necessary for framing his Plea, which ought to be granted. And these laws ought to be construed favourably; for that the Indictment is commonly found in the absence of the party.'

*Lord President.* But your Indictment is in your presence. You are out of your way.

*Love.* Sir, you bring me out of my way.

*Lord President.* Your indictment is not yet found; there is nothing done behind your back, only the reading of this; but that is nothing but a written parchment till you plead unto it.

*Love.* I have something to except against the legality of this indictment.

*Lord President.* Go on, then.

*Love.* Sir, the first motion I shall make is for counsel, to advise in matters of law relating to this trial; and as I do gather from hearing the indictment, there are several matters of law that do arise, in which I desire to have counsel assigned me. And the first is, Whether the act, by which this court is constituted, of the 26th of March, 1650, that forbids the receiving or sending letters or messages to or from England or Ireland, do enable you to receive a charge against me concerning letters to or from Scotland, Scotland not being mentioned in that act by which you are constituted. Therefore, seeing this is matter of law, I desire I might have counsel to advise with about it.

*Att. Gen.* Mr. Love, they doth admit that he hath received and sent letters to Scotland.

*Love.* I admit nothing, sir: you charge me with it, but I do not grant it.

*Att. Gen.* Then you will give us leave to prove it. If he will admit that he hath sent and received letters from Scotland, and so demur that it is not in your power, I will join with him. But, my lord, there was a particular act read, that doth relate particularly to Scotland; and that this court hath cognizance of that act, was read before-hand; but Mr. Love did not observe what was read to him. And it is so far in favour of justice to him, that you read in the laws and clauses upon which he stands impeached; and that there is a law against sending to Scotland. But, my lord, these debates are lingering of time: if a man will demand counsel, he admits the fact, that the fact is true: but being true, he ought not to be condemned upon it; if so, I will join with him; but if he plead Not Guilty, I shall be ready to prove it.

*Love.* I beseech you, sir, I do apprehend there is another matter of law ariseth, and that is from the act of the 26th of March, 1650, there is a prohibition of sending letters or messages to any in arms against the parliament. Now I am charged with sending and writing in letters to Scotland; now it doth not appear to me that Scotland was in arms against the parliament of England, but for their own preservation. Therefore I desire counsel in this, Whether I, that am accused of writing and sending into Scotland, am therefore accused of writing and sending to those who are in arms against the parliament of England? or whether they

were in arms for the preservation of Scotland or in opposition to the parliament of England.

*Att. Gen.* If you will admit still, that you have sent or received from Scotland, then readily grant it.

*Love.* I will admit of nothing; I have as much of a Christian in me, that I will deny nothing that is proved to be true, and so much of an Englishman, that I will admit of nothing that is seemingly criminal.

*Ld. President.* You are a Christian, and you are here in the presence of God, as Achan was.

*Love.* If it be proved against me.

*Lord President.* Then your denial of it will be a high transgression against God.

*Love.* I could urge the cause of Jesus Christ, who, when he was accused before a judicatory, answered not a word.

*Lord President.* You are out.

*Love.* When Christ was accused in a civil business to be a mover of sedition (as now I am) they asked him, Whether he was king of the Jews? and he answered them not a word. But this is that I doubt, whether there be not matters of law arising from the charge read against me, and that in respect of the time of the act of the 26th of March, 1650, which gives power to you to determine several crimes, and to proceed to the trial of the offender. And, sir, it is also to me doubtful whether this be not matter of law, viz. Whether this trial ought not to be by a jury of twelve of the neighbourhood, or whether in any different way from it? And I doubt it upon this ground, your lordship having given me this hint; for I was present at the trial of Mr. Lilburne, and the formality of the law tied him to plead to this, That he must be tried by God and his country. He refused it, and your lordship urged it upon him, that he might safely plead it by God, because God was in all judicatories; and by his country, because, said you, by country is meant the jury of a man's equals. And this is a trial according to the law of the land. Now, if you have declared that in Guildhall, I beseech your lordship inform me, whether a different way from this of a jury of the neighbourhood be according to law in Westminster-Hall?

*Ld. President.* You shall be informed: That was a trial by the law, as it then stood; these now are all upon acts of parliament, and laws of the land, that are of as high a nature as they: Those are antient laws, and these are statutes lately made, and of an extraordinary nature, and were made to meet with such persons as you, that have done such things as you have done. And now for your neighbourhood, I hope you have twenty or forty neighbours that are within the equity of the law.

*Love.* If they be a Jury, I have power to except against 35 of them.

*Attorn. Gen.* My lord, he pretends Mr. Lilburne's Trial; but when you come to hear the Evidence, you shall hear what he was doing then: he was preparing himself then in his business; he thought his time might come; and I am informed, that since he hath been in the Tower, Lilburne hath been his counsel.

*Love.* Mr. Prideaux, Sir, you are no god to know my thoughts.

*Attorn. Gen.* I did say this from his own expression; he was a diligent observer there, that he might know what was done there, that so he might prepare himself.

*Love.* Sir, you did declare this after the change and abolition of a king and house of lords, That a Trial by a Jury of twelve of the neighbourhood was according to law; and you urged Master Lilburne with this, That he might plead, and do no harm unto himself. And not only so, but the house also declared, That since the change of government, they would never alter that way of trial: and upon the 9th of Feb. 1648, they did declare, That though they thought fit to abolish the kingly office and the house of lords, yet they resolved they would still retain and preserve the fundamental laws of the nation, for and concerning the preservation of the liberties, lives, and estates of the people. Now, Sir, they declaring they would never alter this way of trial, and you declaring this way of trial by Juries to be according to the Fundamental Laws of the Land, I beseech you give me the reason why it is denied to me.

*Attorn. Gen.* My lord, it is very unusual for a Prisoner to debate with the Court; here he is to be controuled: let him know he is a prisoner upon the trial of his life, before that Court that hath been empowered by the Parliament; they who did never bind their own hands. I must say, my lord, they cannot bind their own hands; and it is this trial that they have thought fit to give him. And for his excepting against 35, then you will hardly be a Court left. My lord, I think, if he look upon the Court, he will find no enemies here, knowing them to be of his neighbourhood, and most of them of London, and, I think, he known to them, and they to him, the most of them. But, my lord, these disputes are not allowed to others; and the gentleman will (I hope) have so much modesty at last, that he will think he hath said a little too much to the Court; and I think it is not good to provoke too far. And, my lord, he hath said much, and you have given him fair answers, and those that are clear and undeniable. But if he speak of the Jurisdiction of the Court, and that he will not plead, let him speak in plain English, and he shall hear me in plain English.

*Love.* Although I am not satisfied as to the foundation and original of this Court, yet I refuse not a trial, hoping that tenderness of conscience will appear in you, and clearness in me, and weakness of proof against me. Upon this I do not refuse a trial, but I will plead, if may have that which the law allows me. And according to my weak measure and unkindfulness in the law, upon the charge read against me, I do apprehend there may be some things objected against the legality of the Indictment, and many things to take it off, both for matter of time and form, and other things, by a lawyer. Therefore I entreat I may have counsel to be with me, both in my chamber, and here in the Court; and then I will plead.

*Attorn. Gen.* I am not here to make a bargain; but this I will say to him. He hath had so much tenderness and respect, as few men more. He hath had notice of his trial above a fortnight; and, my Lord, he hath not been denied counsel.

*Love.* I could do nothing in order to my Trial, because I have sent for counsel, and they would not come near me, because they were not assigned by this Court; and my studies being another way, and being unskilful in the law, therefore I could do nothing in preparation to my trial. Therefore I pray do not destroy me in a hurry; the more fair the trial is, the more just you will be, and I the more guilty, if it be proved against me.

*Attorn. Gen.* I appeal to Master Love, whether or no it was not denied to Lilburne; and there is none that hears him, but sees he hath prepared himself, and perused several acts whereupon he is impeached. But these are discourses, my Lord, which if he will put too nigh upon the court, that we should dispute, we cannot force words from him.

*Love.* Mr. Prideaux is pleased to urge Mr. Lilburne, but I have more Matter of Law arising from the Charge than he had; and have not that trial by way of a jury as he had; and there are many things in the charge said to be done before the act of the 29th of March, 1650, which gives you cognizance only of things done from that time; so that many things there are, in which counsel would advise me: therefore I beseech you deny me not that right and just favour.

*Ld. President.* You do not breathe the same air and the same breath, for it comes from you both Yea and Nay: for you say you are ignorant, and yet will not be informed by any thing that can be said; and so your ignorance is wilful. But in this case I am sure what law soever you can plead, yet there be some acts and matters you have denied.

*Love.* I have urged Matter of Law arising out of the Charge, from the 29th of March, 1650. There was no Act then, that I know of that did prohibit the sending of letters or messages to or from Scotland, and I am indicted for letters or messages sent to and received from Scotland before that time.

*Attorn. Gen.* I would fain give you satisfaction: do not cast away yourself. My Lord we do use in law to lay it so for the fact, we cannot tell what the proof will be; whether the proof will be within these three months or ten months; and it is laid in relation to other offences.

*Love.* I have here the letters of several counsellors, and they refused me their denial; if I could have got their counsel, I would; and yet if I had it, I could not tell what they should have advised me in, not having a copy of my Charge.

*Ld. President.* If you had desired a copy of your Charge, you might have had it. You must know you are before those that have law and conscience, and that are bound to be of

counsel for you, and that is the Court; and it is their duty to see that whatsoever the law of England allows you to have, that that you should have; but you must have it in a due and proper time and manner of law appointed. You are not now for the present where Lilburne was, nor before such a Court; he was before a Commission of Oyer and Terminer, who are to proceed according to those laws, and upon that the Commission directs; and that is by that which the known and fundamental laws of England direct unto. But this is not in all particulars the like; the Jury there hath a large latitude, who proceed by way of Grand Jury and Petty Jury, which are both included in this Court; so that in all things the proceedings upon that are not as upon this. But thus far the proceedings are alike; you have your Charge, and you are to plead to it, for that is the first thing to be done; there is nothing can answer your Charge, but whether you be Guilty or Not Guilty. If you plead Not Guilty, then the Evidence will be called; and if then any matter of law arise upon the Evidence, it is the usual course to assign you counsel, and to be counsel for you, and to tell you it is law to have counsel; but for you to demand counsel, and first to have counsel assigned you, it is against that form and legality that the law of England appoints; for till you put yourself upon trial, we cannot allow you counsel to the trial; so that you must plead, and it is our duty to tell you so. And it is the duty of this Court to be as careful, when you have put yourself upon trial, that all the benefit of the law may be afforded you; therefore you need not fear it; for if any of these things arise, you now fear, upon the Evidence, then will be your time and our time to stand upon this you now do, touching matter of law; but in the mean time, in truth, that which we are to tell you, and which we are bound in justice and conscience to let you know, is this: That you are out of your way; and therefore do not destroy yourself: for if you refuse to plead, there is nothing then but a plain downright Judgment.

*Love.* In ordinary courts of judicature the Judges do counsel for the prisoner; but you are here judges not only in matter of law, but of matter of fact also; and therefore I cannot advise with you: for should I confess anything, then it ariseth out of my own mouth, and you will condemn me upon it. Seeing therefore both lie in you, both matter of law and matter of fact, I beseech you afford me counsel, and let me have a copy of my charge, and solicitors, that they may be here with me in court, and then I shall willingly plead.

*Att. Gen.* This cannot be done, nor ever was done, to have counsel assigned, until upon matter of fact something did appear; and for the copy of the Charge, it was never demanded, I think, before; and it is in vain for us to speak if the gentleman do refuse to plead: I shall then press you for justice.

*Love.* I do not refuse to plead: but yet I

should be guilty of my own blood, should I not plead for that just and necessary means for the preservation of my life: through my ignorance I may run myself into hazard and danger, therefore I beseech you deny me not that just favour.

*A Lawyer, a Member of the Court.* Mr. Love, you are not prodigal, you say, of your blood; nor are we, I hope, prodigal of your blood; we are to answer for all; therefore I pray let me beg thus much of you: if you plead not guilty to the charge, then there is a proceeding to be by master Attorney, to prove you guilty of it; and if by any evidence that he shall produce, or in any thing that shall fall out from yourself in answer to the evidence, there shall arise matter of law, trust us, I pray you, we do promise you that we will give you the benefit of the law in it; and when there comes matter of law to be decided, which we are persuaded is matter of law, then you shall have counsel assigned you; but there is no counsel to be allowed till the prisoner desire it, and shew matter of law for which he desires it.

*Another Lawyer of the Court.* The main thing you stand upon, Mr. Love, is this: that there is no mention made in any act, that this court can take cognizance of sending to, or receiving from Scotland; but therein you are mistaken; for the business of holding correspondence with Scotland, is in express words appointed to be under the jurisdiction of this court; therefore I think you are utterly mistaken in that. Then, Sir, for counsel, if there comes any thing in the world that is legal, and is a fit thing counsel should be heard in, I think I may promise it, we will not make ourselves so far guilty of your blood, as to deny you that justice that belongs to any man; for it is your just right to have it, and we cannot deny it, when a point of law arises. And you do not urge matter of law, only you question the jurisdiction of the court, and we must over-rule you in that; for we are not to dispute the power of the court: for if the parliament give us jurisdiction, and by a special act appoints, that the business of holding correspondence with Scotland should be within the cognizance of this court, we must obey, and not dispute.

*Love.* I suppose, Sir, a man may demur concerning the jurisdiction of a court to one point: as, if he be accused for treason at the Common pleas, he may demur to the jurisdiction of that court in that: so, Sir, I apprehend there are some things read against me in the charge, of which this court cannot take cognizance, for that they are said to be done before the act for the constituting of this court came forth; so that I may demur to the jurisdiction of the court in that particular.

*Lord President.* For you to anticipate your evidence before we come to it, we do not tie you to the charge, but to the proof; and we must apply ourselves to the proof, and not to the charge.

*Att. Gen.* And for the business of Scotland,

which troubles him much, it is expressed in this very act, that the same offences are to be enquired, tried and judged by the high court of justice, in such manner and form, as other offences are to be tried, in express terms.

*Love.* But there is no time mentioned; for there are two acts, wherein if the prisoner be not indicted within a year, then the fact shall not be prosecuted. Therefore I must demur to the charge, as not legal in matter of form. There are two acts declaring what offences shall be treason, wherein it is said in those two acts, that if the party be not indicted within a year, he shall not be indicted at all. Now the indictment that is against me, looks back to things that are pretended to have been done by me in 1618 and 1649; and so according to those two acts I am not to be questioned for them, it being above a year before I was indicted.

*Lord President.* How is it possible that this comes to be an exception until you hear the evidence? If you hear the evidence, and do find that the witness do speak to this not within the time of the limitation, then is your exception proper; but no counsel can divine what time they can give evidence for.

*Love.* Sir, I am now to look to the charge of Treason read against me, and not to the evidence; and in the charge I am indicted for those things, for which I apprehend I ought not to be indicted. For according to those two acts, I ought not to have been indicted for things pretended to have been done by me so long ago; and thus I apprehend to be matter of law. And for the Witnesses, let them speak to what time they will, yet this I am sure, they cannot prove that I was indicted within a year for those things that are charged upon me to be done in 1648 and 1649, for that were to prove an impossibility: so that it appears to me, I am indicted for those things for which I ought not to be indicted.

*Lord President.* It may be so; and if so, those things will fall off of themselves; there may be some things true, and some things not true; and the counsel may fail in proof of some of them, and you may clear yourself: yet this cannot be before the pleading. When you come to plead, if the matter be not proved against you, and within the time limited, it will fall off of itself without any words at all; and all this time is lost to all this auditory, and no counsel can give you advice in this.

*Love.* I still say, I do not refuse to plead, but if you would afford me counsel, I should think my life in a great deal less danger. For I do not know whether I may not, by the advice of counsel, confess some part of the indictment; whether I may not demur in law upon some part, or a great part of the indictment, which I have done already: as that I am charged for treason for those things that are not within your cognizance or power, as I apprehend, and things done before your acts; and for such things, that if I had done them, I must have been indicted for them

within a year, or else not at all: and these I deem legal exceptions.

*A Member of the Court.* My lord, he is very ignorant of the law; for the fact must be put in question before matter of law can arise; for if the fact be one way, then the law falls out that way; if the fact be false, then another way. Now if Mr. Love brings in any of these exceptions for matter of fact upon proof, whether he sent letters into Scotland, or in such a time, whether that be any offence, that will all arise after the matter of fact proves true or false: but before that, under favour, none can speak to any thing against an indictment, unless he speak against the jurisdiction of the court. And then for other matters they are saved unto him. And you will, I suppose, admit of counsel in matter of law; but his desire cannot be granted unto him until he plead, and until the matter of fact be some way determined.

*Love.* I beseech you acquaint me then with the meaning of these words in judge Coke's Institutes, 'The Prisoner at the Bar may have Counsel to overthrow the Indictment.' It must be either to overthrow a part of the indictment, or to help the plea, either to plead Not guilty in part, or to demur in part. Let me hear then, I beseech you, what is the meaning of those words, 'That the Prisoner at the Bar may have counsel to overthrow the indictment; I cannot overthrow the indictment when I plead; for then witness comes in against me.'

*Att. Gen.* He may overthrow the indictment by the witness; and I believe he is convinced, that the court hath jurisdiction in as full and express terms as law and authority can give them. And for the next, I may say, your lordship and the court did never allow a counsel to pick holes and find faults. But if he object that to you that is just and probable, and that which is dubious and doubtful and fit to be debated in law, assign him counsel. You have heard all his particular exceptions, and given your judgment upon them all. But I hope he doth not here expect to have Lectures of Law read him, and to make him understand them. But as to those particular exceptions that he hath made to you, I think some satisfaction is given, and that every man is satisfied, and that there is no colour of doubt there, for matter of fact, and the times that he insists upon. For the act directing what offences are treason, and not to be arraigned unless they be prosecuted within a year, I must tell him, the impeachment is laid from 1648 to 1651. Yet, my lord, I shall make it appear, that the indictment doth look backward to some offences, and forward to others. It is laid first in general: he committed such and such Treasons and Offences in such and such years. And I shall come with the Evidence, and apply them to such times that are within your power, and in which the law makes them offences: and this is to be debated then, and not to be once spoken of now. My lord, I

shall begin from 1648, and run on with him, that he hath continued in a treasonable disposition, and in treasonable plottings, to the time he was laid up, and since; and will justify all: and therefore it behoves him to insist upon it. And I will make it appear, that he was one of the first that ever did appear against this Commonwealth in plotting; and he did continue so until the time of his restraint, and after that time.

*Love.* Sir, you are no Witness; if you be a Witness, come and swear.

*Att. Gen.* I will use you with all the duty of my place; and if you give me not occasion, I shall not do otherwise.

*Love.* I shall give you no occasion.

*Lord President.* This will make all that hear him to think that this is the very best of his case; as we know it is.

*Love.* Sir, although I do not come here to have the law expounded to me, yet I do come here to have the benefit of the law: and if the law allows me this benefit, (I being unskilful) that if I can find in the charge matter of law arising, then to have counsel to advise me, and to overthrow the indictment; why should I be denied this benefit? And I do not yet, according to my understanding, see that you afford me the benefit of the law, you not granting me counsel to advise me to overthrow the indictment.

*One of the Court.* Mr. Love, if it were possible, I desire you might have satisfaction, for this that you desire is very just; and when it comes to its proper time, then you shall have it; but do not, by disorderly demanding of it out of you time, lose the benefit you might have of it, when it comes to your time. That which you stand upon, and call law, is not matter of law; nor can you call it law, till you hear what the fact is. For can any man judge what is matter of law, till he know the matter of fact? as it hath been told you well, that the law ariseth out of the fact; so that if you will anticipate the evidence, and the proof of the fact, by urging this matter of law which you did hear read in the charge, you will do yourself wrong, and you are mistaken in it; for there is no matter of law appears there, for it is barely, 'Thus you have done.' And if you say this is law, you exclude all the witnesses. Whether you have done it or no, we cannot tell; and if you have done it, whether contrary to law or no, we cannot tell, because we must apply the witness to the acts of parliament that authorize us to sit here. And if we find that the doubt grows upon what the witnesses say, and upon what the law saith, then doth matter of law arise, and then it is time for you to say it appears not by this witness that it is within the act. I do rather speak this, because we do extremely desire you should receive satisfaction; for I would not have any here have any thing put upon him, that may not appear just and according to law; and none can ever say that a man had counsel assigned him before he pleaded here.



*Lord President.* It is now the sessions at Newgate, and there may be many prisoners; and if every prisoner should take the liberty to plead matter of law, and say, I am no lawyer, let me have counsel assigned me, and I will answer; when should we have any man answer? when would men be executed for robbing, and stealing, and killing?

*Love.* That Court is different from this; you here are judges both of law and fact, there the judges are judges of law, and the jury of matter of fact. But, sir, satisfy me in this; if there be any thing in law before pleading to overthrow the indictment, (as I perceived by judge Coke there is, and to which I have received no satisfactory answer) let me have that legal benefit to overthrow the charge. I have said what I can; but if I had counsel here, they could say a hundred times more.

*Lord President.* You have heard no body but yourself, for whatsoever hath been told you by the Court and your friends about you, hath not been hearkened unto. We have spent thus much time, and people are weak, and if you will plead, do. Read his Charge once again; and I tell you the next is judgment.

*The Clerk.* Christopher Love, you stand charged on the behalf of the keepers of the Liberties of England, by authority of Parliament, of High Treason, and of other high Crimes and Offences against the Parliament and People of England; this High Court therefore requires you to give a positive and direct answer, whether you are Guilty or Not-Guilty of the crimes and treasons laid to your charge.

*Love.* I am not satisfied but that matter of law doth arise from this charge; and I do earnestly press I may have counsel, and then I will plead.

*Att. Gen.* I do as earnestly press, that you would as positively say, that you cannot allow him counsel till he hath pleaded.

*Love.* I now see Mr. Attorney's words to be true. When he came to me to the Tower, and examined me, the 16th of this month, he said, That seeing I would not acknowledge, as he called them, my treasons, I was judged peremptory and obstinate. And I remember he said these words to me; 'Mr. Love, though you are too hard for me in the pulpit, yet I will be too hard for you at the bar.' And truly now I find it so; and it is an easy matter for a lawyer, armed with law and power, to be too hard for a poor naked scholar, that hath neither law nor power.

*Lord President.* Doth this do any good to you? If it were so that you are too hard for him, (for you are too hard for every man in the pulpit) yet you sometimes are so out, and in that you are controulable. If master Attorney be too hard for you here, let him be too hard for you; but it is the Court that are to deal with you here: we will not do it because of his saying; but you must think that the Court will be led by their Evidence, and not by Mr. Attorney.

*Love.* You gave this favour to master Lilburne, and I do not deny to plead: but I am not prodigal of my blood, therefore I crave Counsel.

*Lord President.* I do not know what to say more to give you satisfaction, than what I have said. You say you do not deny to plead, and yet you do not plead; you say Mr. Attorney is too strong for you, but you know it is not he, but the evidence may be too strong for you. And do not you think that you have such judges as will let you receive any prejudice? Mr. Love, you are a Minister, I pray shew forth the spirit of a minister of Jesus Christ; carry yourself so, as that you may not either wrong yourself or the Court. I would have you behave yourself without recriminating. You speak of Mr. Attorney, as if he could be too hard for you, as if we were all of his side, be it right or wrong: know that we are men of conscience, and have souls to save as well as you.

*Love.* The Charge is long, and I never heard of it before, nor knew of it before.

*One of the Court.* We give you our faith and credit, that if any matter of law ariseth, we will not make ourselves guilty of your blood, but we will allow you counsel: yourself hath read a Book in the Court, that shews the Court cannot allow you counsel till you plead.

*Lord President.* Did you ever consult with the lieutenant of the Tower? What, will you cast away yourself?

*Col. West,* (Lieut. of the Tower.) I could, my lord, advise him no more than what I knew; and that was the time of your sitting.

*Love.* I hope you will not in a hurry spill my blood.

*Lieut. of Tower.* Since Saturday was seven-night he was not restrained.

*Lord President.* Your profession goes much in profession; but when it is abused, it is the highest transgression; you would evade things with mental reservations, and say and unsay at the bar, as high as any Jesuit can do.

*Love.* I will not lie for my life; you may say what you please, and do what you please, I speak before God and this audience.

*Lord President.* Mr. Love, know that we are here in as sacred a posture as you are in the highest place of your calling; and if we do not know that God is here present, we are the miserablest creatures in the world; and therefore if your office and ours do not make us know that we are in the presence of God and Jesus Christ, it will be but ill for us; and yet you hurry out, that it should be such a terrible thing in you more than in us. You have spoken many words as a shadow in the air, there is nothing material in them, but the strength of your will against the judgment of the Court.

*Love.* If I do plead to the Charge, I do allow the matter and form of the Charge to be legal. I desire to have counsel to come to my chamber; I do not say, to come to this place, but to have liberty for them to come to my chamber.

*Mr. Steele,* (Recorder of London.) I did not

think to have spoken, nor have I usually spoken in this Court, yet I will speak a word out of tenderness to yourself. You have very often insisted upon it, that you should have counsel assigned before you plead, that is it you plead for: truly the course of law is this, That if the prisoner charged at the bar, before he plead shall demand counsel, he must of necessity put in some special plea before the time he can demand counsel. The court doth not enforce you to plead Guilty or Not Guilty to the matter of fact; but they say, of necessity you must plead. If you put in a special plea, and tell them that it is a special plea, and desire counsel upon it, they will consider it: but till you can declare what that special plea is, for there is a general plea, and a special plea; the general plea is Not Guilty, the special plea is in some particulars. Now for you to alledge neither the special plea nor the general plea, it is impossible that counsel can be assigned you. And whereas you say you are concluded if you plead, and cannot object against the indictment afterwards; no, sir, I tell you in the name of a Christian, and one that knows a little of the law, that all the objections you have against the indictment, the formality of it, and those things you speak of, as that of your fact not being committed in such a time that the act holds out that the high-court hath no relation to try you for Scotland; all these will be saved to you, if they arise upon matter of fact from the evidence. True, if you make an objection against the jurisdiction of the court, that hath no relation either to the special plea, or general plea, it cannot be. It is impossible an objection should be received against the essence of the court, there is none can possibly over-rule that for you but themselves; it is such a thing, that no counsel can be assigned you as to that, because it strikes at the very being of the court. Now therefore I beseech you in the name of a Christian, that you will not do yourself that prejudice; for nature teacheth every man to preserve himself by all just ways and means; and I do believe that in this business you have apprehended it for your preservation, and that you are loth to do any thing that tends to your destruction; but you may satisfy your conscience, in that you have done what you can. And when you have pleaded, and used all the arguments you can, and have heard the Judgment of the court in it, you may satisfy your conscience, that in the words of honest men (unless it be the jurisdiction of the court, though you have tacitly spoken there) you shall have that right and privilege which the law allows you. I confess, I never spake here before, and it is a rule amongst us, that none but the president should speak; and we have done more to you, than to the greatest person that ever spake here, because we think some necessity lies upon us towards you, in regard of your calling and the worth that hath appeared in you, to direct you what you have to do.

*Love.* Sir, a man may demur touching the jurisdiction of any court, if he can shew any

thing in the Indictment that the Court cannot take cognizance of, which he is charged with; though he do not demur simply as to their jurisdiction in general, yet as to that particular he may demur: as a man may demur in Chancery, when a cause is only triable at the common law.

*Lord President.* You must know, that he that speaks against the jurisdiction of the court, speaks against the jurisdiction of the parliament of England.

*Mr. Steele,* (Recorder of London.) *Mr. Love,* to help your understanding, I did not say that *Mr. Love* did expressly speak against the power of the court, as if they had no power to try him; but this he seemed to say, That what he hath offered against the jurisdiction of the court, in any thing he is questioned for, if he have not counsel for it before, he cannot have it afterwards. Now if the question you offer be a mixed doubt, for your objection is mixed; for you say, the court hath no power to try the facts whereof you are indicted: now is it possible the court can judge of that or know there is matter of law ariseth out of it, till the fact appear out of the mouths of the witnesses? It may be the fact will not be proved, then there will be no matter of law arising; if the fact be proved that it was done at such a time, before the act was made, when that appears to them, the court then will strike it off, you shall not need counsel, then we shall not regard it: if upon the fact any other doubt ariseth in relation to Scotland, (for it must be from two witnesses, your doubting being mixed with matter of fact) we shall then be able to judge of it.

*Love.* Sir, if any crime be laid to my charge, that ought not to be laid, and that this court can take no cognizance of, I should have counsel in it.

*Lord President.* We have spoken more to you than became us, perchance, and that from tenderness to you; and if nothing can give you satisfaction, but over and over with the same things again, we can but speak our consciences, and leave it to yourself.

*Love.* I do declare I do submit to the trial, and am willing to do it; but it behoves me to use all just means for the preservation of my life: if you will give me but a day's time to consult with counsel.

*Lord President.* That is in your learning sufficient to say, you will do it, and yet do not do it; because I say I will submit, therefore I do submit; this is no obedience at all. I know no such logic as this; it is submitting, that must do it; you will submit, but you will not act: pray, *Mr. Love*, be so charitable as to take us to be Christians.

*Love.* What prejudice, sir, can it be to this court, being I have not spoken with any lawyer, to give me but a day's time? I will desire no more.

*Att. Gen.* I would fain know, why may not the next prisoner say, You have done so in *Mr. Love's* case?

*Love.* You have accepted of special pleas,

you did it in the case of sir John Stowel; and if I through my ignorance in law cannot urge the strength of law, and a special plea, as otherwise I might do, I beseech you let me not be prejudiced by it.

*Lord President.* Sir John Stowel insisted upon special matter he had to plead, and that was, the Articles of Exeter; but he did first plead to the charge, Not Guilty: yet we gave him that benefit; and he had that which did last a great debate of this court, and so did Hamilton, and divers others: we will do no otherwise with you than with them.

*Love.* If you now deny me my special plea, I cannot help it; which is this, That the writing or sending letters, if it could be proved against me, into Scotland, doth not come within your act; and that it is only England and Ireland that are mentioned therein.

*Lord President.* If there be a special plea wherein there is no difficulty, then we give no counsel; but a special plea must have something that is dubious in the judgment of the court: but for this, that in the letter of the law every school-boy understands, the judge will not allow you counsel in a trivial matter; we have gone over and over with you again, and this is like other discourses with you: but certainly never was the like seen, that a court was so trifled with.

*Love.* This is my humble motion, allow me but counsel to-morrow that they may appear here.

*Lord President.* You may have counsel to-morrow, as the case shall be.

*Love.* Shall I have the copy of the Charge?

*Lord President.* You shall have what is fit, you shall have nothing denied you when it comes to you to have it, you shall have that respect; I do it not to flatter you: but refuse to plead at your peril.

*Love.* Will you give me but this favour, that I may have but an hour or two's time to consult with a lawyer?

*Lord President.* I do not know but that this that is done, must be done for all that come to the bar.

*Att. Gen.* I had thought there would have appeared in him that calls himself a Minister of the Gospel, more meekness and obedience to authority, not out-facing authority; and it is not well done of him. My lord, I humbly beg, that having had thus much of your patience, and persuasion by arguments, and all means used to him, and nothing will prevail; that, my lord, you will now be pleased to give your judgment according to the rules that the law appoints you, upon him that refuseth to plead.

*Love.* I do not refuse to plead.

*Ld. President.* Dost a man of your learning say you do not refuse?

*Love.* A man may demur to his charge, and yet not refuse to plead; and the Court may grant me a day's time, if they please; for I come here unarmed and unprepared.

*Att. Gen.* His demur is to matter of fact.

*Ld. President.* Will you put that upon law, VOL. V.

for law, which is not law? And by your putting yourself upon that, you confess the whole charge.

*Att. Gen.* I desire one favour, my lord, which is of justice to him; which is, that you would be pleased to command your Clerk to read that Act that says, 'If any person before you refuse to plead, he may hear the Sentence of the law upon him.'

*Ld. President.* Clerk, read the Act.

[The Clerk reads that part of the Act about refusing to plead.]

*Att. Gen.* My lord, we desire his final Sentence.

*Love.* My lord, I desire both the favour of a day's time to consult with lawyers.

[The Lord President consults a while with the Court.]

*Ld. President.* I now do deliver it from all of the Court, and all of them are of that mind, and now plead, or you shall have Judgment.

*Love.* But if I plead, I desire I may have counsel to hear the witnesses.

*Ld. President.* We will not make a precedent; for it will be said, it was Master Lilburne's Case, and Master Love's Case.

*Love.* Will you promise me, that I shall have counsel to hear the witness?

*Ld. President.* We will promise you justice. Read the Sentence.

[The Clerk goes to read the Sentence.]

*Love.* Not Guilty.

*Att. Gen.* My lord, we do say in the behalf of the Commonwealth, he is guilty of the Crimes and Treasons laid to his Charge. And, my lord, you now perceive, that when you have been long troubled, you see he comes very hardly to it; an innocent man would not have made so much ado, and knowing his innocency, would not have had so much capitulation and trifling with a court of justice. My lord, for these crimes you are pleased to observe they are of several natures, and of long continuance. And now, my lord, for the state of the Evidence, it is commended to the Charge of another gentleman, that is, Master Solicitor General of the Commonwealth, to open to you the state of the fact, by which he stands here impeached and accused, the nature of it, and how it should have been carried on, the series of time, the persons with whom he conspired, how plotted and contrived to undermine this Commonwealth, even to the foundations of it. My lord, when that is opened, I will then produce the evidence to make it good against him.

*Solicitor General* (Mr. Reynolds.) My lord, Mr. Love useth much for himself, but he doth not tell you what. For my part, I never saw his face till now; but his own carriage, if that do not do him wrong, none will. He says, he is singled out from all the rest of his brethren, I suppose he means those that are his fellow-conspirators: the reason of that is, because he was the first, he had a hand in the first action and last action; so that from the beginning to the end he was the principal man, both by counsel, friends, purse, and encouragement: and that is

the reason he might justly be singled out to be first in the punishment, because he was first in the fact. He says, God in Achan's case wrought the discovery. My lord, I think the Court will think, that God was the great discoverer of this great Treason: for through the whole series of it, it was pressed and carried on with as much caution and secrecy as the wit of man could contrive; and nothing but the goodness of the God of lights, the Father of lights, could have brought this to light, who discovers the secrets of all hearts, and hidden things of darkness; he hath discovered this. My lord, the nature of the Treason, it is not one or ten treasons, but it is a mystery of treasons, woven together during the space of two years, under the notion of religion. Many of them that were the conspirators giving out, that they were a party distinct and separate, and so they did behave themselves, like a party separate from the rest of the Commonwealth. First, This party did assume to themselves sovereign power, and did exercise it divers ways; they did take upon them to send agents abroad to treat with foreign princes and states, enemies to this Commonwealth, and to give commission to that purpose, and to give instructions to that purpose; they did demean themselves in this point, as if this party had been a free state. My lord, the very first of their rise was that in February, 1648. When the Scots had declared for the king, then they send immediately to their brethren here, these conspirators, to let them know that they intended to make addresses to the new king very speedily, and that there were propositions drawing to that purpose; and did desire a firm compliance with them, promising them faithfully (and how they kept it, we shall hear) as their brethren of Scotland, that their interest should be provided for as their own; and the covenant, that was the ground of all. When they had thus promised, they behaved their brethren, and thereupon went about the work, and established a council at Dowgate, and there they met, and plotted and contrived how in the first place to make an agreement between the king and the Scots, to the intent that when they were agreed, they might come with armed forces to invade this Commonwealth. They were plotting and contriving this about Midsummer, 1649. They were taken notice of abroad to be considerable men; and the king of Scots, as they called him, thought fit to send an agent to them, to treat with them, which was one Mason, my lord Piercy's man; his errand here, was to reconcile both parties, the royal and Presbyterian party, and to make them both subservient to do his work. My lord, he treated with the countess of Carlisle, William Drake, and divers others, citizens of London, and this was with the privity of the ministers. My lord, he had commission from the king to assure these conspirators, that if they could procure the Scots to send more moderate propositions than they had formerly sent (for the treaty was broken off before, the propositions were then immoderate) that they should be satisfied.

Thereupon they were so confident of themselves, and so bold (and in this Master Love had a principal hand) that without any more ado he frames a letter to Scotland, to advise them, and to persuade them by all means to send more moderate propositions. The Scots return them this answer, That they saw no cause to send more moderate propositions; but they desiring a good success of the treaty, they should send before-hand to the king, to prepare and move him to comply with the propositions when they came. Thereupon they were as ready, whereas they sent with the one hand to the Scots, so with the other hand to the king. They framed a letter to the king, and I will express it in their own language; this was the substance of their letter. First, they let the prince know, that there was a considerable party in England sensible of their sufferings there (they made themselves so considerable;) and by and by you shall see what became of that. First, the king did understand them to be so, considerable. Secondly, they were bound in conscience and loyalty, to the utmost to help him to his just rights, if he were once engaged with them by taking the covenant, &c. and prosecuting the ends of it. Thirdly, that there was no way to do this, but by closing with his subjects of Scotland. Fourthly, that being done, all the Presbyterians were bound to assist him. And this which they did, must be sent away before commissioners come, to prepare the king to give them good entertainment. With this letter there was a letter sent to the late queen, to desire her by all means to work the king to a compliance with the Scots. And there was a letter sent to my lord Piercy and Jermin to that purpose; taking notice that the queen, my lord Piercy, and Jermin, were their very good friends, and ready for this conjunction: Whereof they took special notice, and did approve of it as a thing very acceptable, and which should be remembered in due time. My lord, this letter was sent; and afterwards Mason he brings the answer from the king, and queen, and Piercy; all agreeing to this work, that the Scots, if they came with propositions, should be complied withal. But Piercy and Jermin writ further, and did advise them to the intent the king might not fall back again, that they would send a meet person to be present about the king when the commissioners came, that so he might see fair play. And thereupon Titus was sent away, to be an agent there for them at this Treaty: And this Treaty was at Jersey. But this treaty took not effect, as was desired; whereupon they resolved upon another Treaty of Breda. But at the Treaty at Breda the king advised in his letter (which I shall read) in the latter end of the letter that they would send commissioners then to treat with him. My lord, the letter was written by the king back again to the ministers: First, the king in the letter took notice of the ministers non-compliance with the present power, and of their loyalty and good affection to him; and that if God restored him, he

would requite them. Secondly, he promised all satisfaction to the Scots. Thirdly, made large promises of high favours particularly to the ministers. Fourthly, wished them to send commissioners sufficiently instructed, to treat at Breda. Now, my lord, in the diary that came along with this (for there was a diary of all Titus's negotiations) in that diary it did appear, that the king was very much satisfied with the correspondent's application to him; and that that should be a main argument to him to satisfy the Scots. So, my lord, if they had not thus moderated and persuaded the king that they were a very considerable party, he would never, in all probability, have closed with the Scots, but have thought them very inconsiderable. But when he was informed that if he closed with the Scots, he should have a considerable party in England, that made him think the Scots were worth closing with. My lord, Titus, in his negotiation at Jersey, did assure the king, That the ministers were averse to the present government both in pulpit and in print; and that they were well affected to serve him and the nation; and that the nation was ready to espouse his quarrel, if he did join with the Scots. Thus he did assure him in the behalf of the ministers. And to shew how they did own this, they did like this assurance so well, that they sent him another letter; and they did likewise send him a letter of thanks for his good service he had done, in possessing the king how considerable they were. My lord, after this business of Jersey, when Titus had done his good service there, he was coming home to make his relation; but hearing by the way that the Council of State had intercepted some letters, he durst not come farther than Calais: And from thence he sends a letter, to let them know all this; and withal, that he had something to communicate to these conspirators, that was not fit to be communicated by letter; and therefore desired that some meet person might be sent to Calais. Thereupon this letter being read in Mr. Love's study, (so secretly was it carried) there it was agreed that major Alford should be the man that should go to Titus, and should receive all this account from him. Whereupon Alford he went away to Titus presently, and there he did speak to him; and Titus did acquaint him with all these proceedings; and withal, they did advise that a commission should be sent in the latter part of the letter. So that now they had no more to do, but, since their hopes failed them at Jersey, to have an eye to the Treaty at Breda, where they desired to send commissioners. My lord, this letter, to be presented at Breda, was managed at Mr. Love's house. Col. Massey, col. Graves, Titus, &c. these were the parties. There were letters sent to them to act accordingly. And Titus sent letters to the king and queen, and Piercy. And again, my lord, for the Commission, it was as transcendent a boldness as ever was done by private men: The Commission was corrected by Mr. Love; for it was rough-drawn by William

Drake, which was the English agent here. But Mr. Love, in his study, and Dr. Drake, did help to correct it. The substance of the Commission was this: 'We, the Presbyterian Party in England, do authorise you Francis lord Willoughby of Parham, Edward Massey, James Bunce, Richard Graves, and Silas Titus, to treat on our behalf, and the rest of our brethren the Presbyterians of England, with the King; and to assist our brethren the Scots Commissioners in their Treaty with the King, and to do according to the instructions annexed.' My lord, here be the Heads of the Instructions; That the Commissioners should use all arguments they could to move the King to give the Scots satisfaction, and to take the Covenant; and particularly to inform him of the condition of affairs, and how things stood in England at that time, all which then cried out for an agreement with the Scots; giving them full power of all things; and what should be concluded by them the Commissioners, should be confirmed by the Confederates. I think, my lord, here was a very large Commission; whatsoever they thought fit, they were willing to comply with and make good. My lord, at Mr. Love's house, at the same time it was moved, (according to a letter from my lord Piercy to William Drake) that a good sum of money might be sent the king, as a great means to dispose the king to an agreement with the Scots. But they did not think fit to be cozened of their money; but if this conjunction did follow, then to raise money considerably. And they went on so far, as to debate how to raise this great sum of money for this pious work, as you shall hear by and by, under what notion when propounded. Those men agreed that the best way was, That the ministers should have several correspondents; and that they should propound the lending of 10, 20, 30, 40, or 50*l.* for a charitable use: But you must not ask what this charitable use is for. And this charitable use, what would it have been? If God had not blessed the battle at Dunbar, we should have seen it. My lord, a little before the battle at Dunbar, when they had letters from Massey, or Bailey, or somebody, they then began to understand their brethren better than before: For he did inform them, That notwithstanding what was pretended, yet for all that, there was no English employed, nor was the king crowned. This did disturb the minds of the conspirators very much; insomuch that they did expostulate with a large letter, written by Mr. Love and Dr. Drake, written in a table-book in sack, and sent there. They did expostulate with them, because the Presbyterian party, which was the over-ruling party, were grown so confident of carrying all before them, that they did neither crown the king, nor mind he English. They did blame them for this, seeing this going upon a single interest, and upon one party alone, which they did call goddy, would not do well. And, my lord, it proved so indeed: They carried it on upon this till the battle at Dunbar came, and then they be-

gan to be of another mind. After that battle, there was a letter from the Commissioners of Estates, pressing for arms and ammunition; and letters from Massey and Titus for money to be sent. My lord, these good-natured men, notwithstanding they had been so handsomely dealt withal when their brethren were in power, yet for all that, so fierce and eager were they to carry on this great design, which God knows what it would have come to, they notwithstanding, upon Mr. Love's proposition, (for he was the man who did propound it) agreed to send 500*l.* presently to Massey. My lord, this money was raised, and subscriptions taken by Mr. Love himself at his own table. And this is proved by one who brought his ten pounds: He brought it to Mr. Love, and would trust nobody else with it. And this was sent away presently by captain Massey. My lord there was a large letter sent also with the money, wherein was good counsel; for besides the money, he did write to advise his brethren, that it would be no able service to endeavour after union. The letter was sent; and that large letter, inviting to union, had been delivered to the assembly; and that would help to quash the dissenting party in Scotland, who had made the king a prisoner. But now the state and church were all agreed: And this was the fruit of Mr. Love's letter. And if they had not been so united, they could have done no harm. This letter came so seasonably, that they conceived it very considerable. They pressing to union very much, by this means did quash the dissenting brethren; and by that means they came to be as now they are. My lord, about Christmas last there came a letter from Massey, which gave an account of crowning their king, and of great preparations to take the field; and that the correspondents here should beware of unreasonable rising; and that they were most afraid that these persons would rise too soon, and spoil all. My lord, in answer to this letter, they write back again to Massey, to advise him on the other side, to take heed that he came not into England but well provided, and not to depend much upon the assistance here in England: They were afraid he was too weak, as he was afraid they were too forward. My lord, after Cook was apprehended, then the correspondents met no more at publick meetings; and yet they received letters from Drake, Massey, Bunce, and the rest (whereof Mr. Love was still made acquainted, as a principal man) that told them of the hopeful condition of the Scotch army, that they intended to engage in England; advising the party here not to be too forward. This was the second advice. And see the reason of it: For if Mr. Love sat at the helm, as he did, all the meetings being at his house, after Drake went away, he still stating the question, drew these letters and corrected them. And if he were such a main stickler, truly there was very great reason for his advice. My lord, about the middle of March last col. Bamfield's man brings an answer to the message in the table

book, written in sack, containing four or five sheets of paper. Upon this packet there was nothing written but the letter *L.* to deliver to one of the Conspirators. And seeing nothing but the letter *L.* written, he carried it to Mr. Love, and Mr. Love did own it as sent to him. And that was the large Narrative of the State of Affairs in Scotland, after the fight at Dunbar, how things stood there. My lord, with this narrative was sent also a letter from Mr. Bailey, by order from the general assembly: they did order Mr. Bailey (which was the Scotch correspondent there) to write a large letter; and there was another letter from my lords of Argyle, Lowdon, and Lothian, &c. It is worth your observing what this letter was that came from these men: First, Thanks for the good affections of Mr. Love and the rest of the conspirators. Secondly, Encouragement to persevere; and to credit Bamfield's negotiation for money. Thirdly, Promises to repay all, whatever they should lend. But when and by whom this payment should be made, the letter will tell you; and that is, when God shall bless their endeavours in procuring a free parliament in England. So the parliament in England must pay all the Scotch debts, that these conspirators shall lend. Truly, I think it will be a very free parliament indeed, when it comes so free out of the people's purses. My lord, Mr. Love and others gave Bamfield's man, that brought this narrative, out of their own purses ten pounds, and sent a bill of exchange of thirty pounds to Bamfield. By one witness it will be expressly proved that ten pounds of this money came out of Mr. Love's purse. My lord, William Drake's last letter did inform that Massey would break into England as soon as there was grass for his horses; and therefore he sent to have a good bank of money provided in readiness; and that they should think of timing a party; and that they should neither rise too soon nor too late, but just when Massey came in. This Mr. Love told major Adams. My lord, now we come so near to the time, as that one of these conspirators is apprehended by the council of state. When he had been in restraint three days, he sent to Mr. Love, and Mr. Love came to him; but he had been at a kind of fast; for they did keep fasts once a fortnight, at least, and prayers for the good success of this design; that God would bless this wonderful treason, which was for the making, by the Scotch army, an utter subversion of this commonwealth, and the free, and noble, and magnanimous people of England should be made vassals and tributaries to the Scotch nation. This was the design; and for this design the ministers fasted and prayed; but, it is plain, God did abhor such things. And, my lord, master Love took upon him to speak to the person under restraint:—'Take heed,' saith he, 'what you do, lest you wrong yourself or others.' And said; 'It is true, Titus's man hath broken up papers; but we are all well enough. But give notice to the rest of the confederates, that they may

'not be surprised; but be you not troubled, 'because we have prayed for you this day.' And they implored the God of Truth, that nothing of all this should come to light, but that we should be in the dark still in generals. My lord, this is the true state of the evidence, as near as I can present it, with a frail memory. And, my lord, I have opened nothing but generals; your lordship and the court will judge it; and master Love will have the less to do to answer. But it appears by this, that there hath been such a practice, such a series of treason, treason upon treason, that one act of parliament is not enough to contain it; but all those acts of parliament read, every one of them make him a traitor. And, my lord, I am sorry I have taken up so much of your time, especially when you have spent so much time before. If your lordship, therefore, will be pleased to have the patience to hear the witnesses, we shall prove more than I have yet opened.

*Attorn. Gen.* My lord, this was an early treason that began betimes to crush the Commonwealth in its infancy; and, my lord, master Love being singled out for justice, you will, anon, observe there was singular cause for it; and if he had had his desert, it had been long before now; but states can play sometimes with treasons, and not take a time till they see fit. My lord, this Treason, as I have opened it to you, began in the year 1648. The king of Scots, so called, but take notice, that the same nation and persons that proclaimed him king of Scotland, proclaimed him king of England also at the same time in the same nation; and those persons that proclaimed this person king of Scotland, the same proclaimed him king of England. My lord, you have heard some of the conspirators, named Titus and Drake, active men both of them; these men have been so ingenuous, that they have fled for their treasons. Notwithstanding, this gentleman, a minister of the gospel, he doth not do so. They have confessed their offences, and are fled for them: they dare not appear, they have so much guilt within them that prompts them to keep away; but this gentleman hath not so much. My lord, Drake was so active, and it was carried on with so much secrecy, and so much (as they thought) of caution, that master Drake writing, as that gentleman next Mr. Love doth, in short hand, he burnt his papers, and burnt all where any thing was to be seen; so that no originals are to be seen. My lord, in this case it hath been opened to you what transactions Mr. Love had with Scotland, and you have been pleased to observe, it was a tender point, that Mr. Love did enter discourse with the Scotch nation; Mr. Love was very much troubled at it, and he may see just cause to be troubled at it. And will you give me leave, there hath been blood and treasure spent, as was told you by Mr. Solicitor. I am afraid, I might too justly say by that gentleman, and those he did seduce, that they have been too much the cause of this blood, even

that gentleman that stands at the bar, that should be a man of peace, and not of blood. My lord, I may justly say, that that gentleman hath been too much the cause of these late Engagements between these two nations, and making himself a party. And it is a sad thing, when parties appear against a state. My lord, I am too much afraid, whatever God pleases to work upon him, that it should touch his conscience that he should be instrumental in such a work. But I verily believe, had there not been actings from hence, there had not been so much forwardness in the king's party to the Scots. My lord, I will mind that gentleman of what is said, of the 5th of November; I am sorry for it, that it should be said of our ministers, 'whose faith is faction, whose religion is rebellion.' It is said so of the Romish ministers, I hope it will not be said so of the English ministers, That their faith is faction, and that they pray for strife, and fast for strife. My lord, for these men, Drake and Titus, they are gone, as I said; and they did confess themselves so much guilty, as that they have fled for it; and Mr. Love doth know (I am sorry to see him in that gesture) that he was conversant with them all, and doth know (I believe) that we can prove it: and when he hears the men named, he will say so too. Truly, my lord, I have nothing to say against the person of the man, but against his vices and faults; and nothing to his function, and nothing to those whom he pretends so boldly to represent, that is the presbyterian party. We do all know there are many honest, precious, and godly men, that have received no discountenance from the state; nor this gentleman, that should give him any countenance or encouragement to oppose the state. But it is somewhat a bold thing, for a particular man to be the head of a party, and they to engage as representing a considerable party, to engage to send commissioners to agree upon instructions. This is very bold. But, my lord, God be thanked, many of those that were seduced at first were wise, and did come in before the last; and did not strut it out, my lord, with states and justice, as that man hath done before now, and at present, even outfacing justice, and boldly, I say, wiping his lips: he hath done no offence. My lord, they were so bold with Scotland, that there was a known agent there, maintained and kept between Scotland and them: and I will tell him the gentleman's name: his name was Mr. Sterks. And, my lord, when he went away, the act requiring those of the Scottish nation to be gone, that gentleman did supply him with money himself, and others gave eight or ten pounds in his purse, to carry him away. My lord, I believe he knows this; and I am sorry that that gentleman, that hath gone along with us in much of this war, that he should at last so much betray his own discretion, as rather to trust a reconciled enemy, than to be true to his own friends. I say, he trusts a reconciled enemy, and a weak enemy, and that he will think and will know that they might

betray him ; as justly may be done, when men so cast themselves upon the party of the king, and queen, and Piercy, and Jermin. It is no great policy nor discretion to have so many of counsel. They say, three keeps counsel ; but this gentleman hath now 20, 30, 40, in Scotland, France, and Holland, and agitations between them, and frequent intercourses. My lord, I shall now call the witnesses out to you, which when Mr. Love doth see, himself will say are honest men, and to be believed.

*Love.* My lord, I beseech you, let me speak a word.

*Att. Gen.* My lord, he hath heard his charge in particular ; and those things which, if he be ingenuous to himself and his own conscience, he cannot but know we shall prove them : And before we prove them, I desire to hear whether, or no, he will confess them.

*Love.* I hope this court will not hearken to the insinuations of instruments of state, who are well rewarded for their eager prosecution of men in such a condition as I am in : it is an easy matter, through flourishes of law, and strains of wit, to stir up the minds of my judges against me.

*Id. President.* You have heard the matter opened to you, which you cannot in any Christian or godly conscience or understanding but acknowledge, that such secrets as these you were privy to, and came, to your hand : You cannot, before God and man, do better than to confess these, which you know, by the urging of them upon you, are come to our knowledge.

*Love.* Will you give me leave to express myself as to these things which I am now charged with ? I do declare and protest, in the presence of God and this great assembly, that I never wrote any letter either to the king of Scots, or to the queen his mother, or to the church or state of Scotland in the general, or to any particular person of the Scottish nation, since the wars began between England and Scotland, to this day. I do declare also, in the presence of the same God, I never received any letters, written to me, either from the king of Scotland, or queen his mother, or from the Church or state of Scotland in general, or from any particular person of the Scottish nation since the wars began between the two nations, to this day. I declare and protest likewise, in the presence of the same God, I never collected, or gave, or lent one penny of money either to send into Scotland, or into any foreign part, to the king, or queen his mother, or to the church or state of Scotland in general, or to any particular person of the Scottish nation, since the wars began to this very day. And as to these particulars, I have said it often, I am as innocent and as harmless as the least child : and if you will take the aggravating of these circumstances against me, and will proceed upon aggravations of the crimes against me, I hope God will help me with more peace of conscience to undergo the censure, than you shall have to inflict it. And as for that

gentleman, that made that great relation to you of the Treaty of Jersey ; for my part, I am as great a stranger to all those transactions as any here ; I never saw the face of Titus ; nor did I ever send to him, or receive any thing from him.

*Att. Gen.* My lord, we shall call the Witnesses.

[Captain Potter is called into the Court.]

*Love.* I except and protest against this Witness ; for he hath been already examined in private, and hath made his confession there ; and that is equivalent to a conviction : and I hope the court, in justice, will not admit of this man for a witness.

*Id. President.* You shall have Justice as well as ever any jesuit had.

*Att. Gen.* You see now what Mr. Love drives at, and you will find his jesuitical evasions. And, my lord, let him be asked, whether ever this man was before this court, or any committee of this court : and I think in justice you ought to examine witnesses beforehand. But it is clear and evident that this man hath been a party with him. I do humbly conceive it is so clear and evident, that rather I should except against the witness, as an incompetent witness, than Mr. Love, because he hath been a party with him : But I desire he may be a competent witness, and one in whom there is more ingenuity than there is in Mr. Love.

*Love.* Sir, before he swears, I beseech you ask him this question, Whether he hath not been threatened with death, if he would not witness against me ?

*Id. President.* You cannot over-rule us with your beseechings and beseechings ; it will not do it : Your over-importunity shall not prevail with us.

*Love.* Let God prevail with you : though he may be *Legalis Testis* before conviction, yet he cannot be so after conviction.

*The Clerk.* The evidence you shall give between the Keepers of the Liberties of England and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God. [He is sworn.]

*Id. President.* Now look upon the God of Truth, and speak the truth.

*Capt. Potter.* I shall speak the truth.

*Att. Gen.* That gentleman was pleased to trust others, as I said, even reconciled enemies, and fell from his friends. I do grant that this gentleman hath confessed : and if every honest man confess his fault, that is no offence ; for an honest man questioned for a fact, to confess the truth thereof : I have not heard that that is no good law. And I do say, that before ever this map came to be examined, we did know it all ; and perchance from those that this gentleman thought fitter to trust than us. But we did so know it before, that every circumstance was opened by us ; and we did convince this gentleman and others, though not Mr. Love. But Mr. Love saith he must not



accuse himself, he must not answer; but this gentleman did more ingenuously. I do affirm that he was questioned to every particular, before he answered: And we do know that the state hath long hands and ears. Now, my lord, if you please, ask Mr. Potter what he knows of this business, of sending to and receiving from Scotland.

*Ld. President.* You are upon your oath, and in the presence of God, than whom there is no higher upon the earth, that is in the seat of justice, and without relation, as Mr. Love saith, to the parties: Therefore tell the truth of your knowledge, in the transaction of this treacherous treason, that hath been now above two years in the passages between the Presbyterian party.

*Att. Gen.* No, my lord, we will not own that upon them: There are some that do style themselves so, the Presbyterian party, that are conscientious persons, and pious and godly men; and I should do them wrong, should I lay it upon them: But that which I do, is against those that do undertake to style themselves the heads of them.

*Ld. President.* Begin then with that which concerns Mr. Drake's agency.

*Potter.* I have taken an oath to speak the whole truth in this business; but that is the truth I know. I desire I may not be pressed to things that I have only heard.

*Att. Gen.* You must, and from whom you heard them.

*Potter.* I was examined several times, and had a wide latitude there; and then I was to speak to every truth as I thought and heard: But now I have taken an oath to speak the truth between the state and this gentleman. And I beseech you that I may be held close to those things, and I will give you the fullest and fairest account I can. What I said before, was in order to the discovery of the thing, much of which I had by hear-say from others; and in that I may mistake in persons, places, and times. What I have done myself, and what I know this gentleman hath done, that may be put to me fully.

*Love.* The Witness must so speak, 'That we have seen and heard, that do we testify.'

*Att. Gen.* Your doctrine will not pass here.

*Love.* It is Scripture, Sir; and it behoves me to speak, for I am upon my life.

*Att. Gen.* Mr. Potter, speak what you know, and from whom; and I desire there may be no glosses put there by those who, I am sure, cannot do it. I ask you first of the proceedings, and sending to Scotland, and back again to England; and what you know of it, and from whom.

*Potter.* My Lord, the Committee that examined me knows I was not privy to the first transaction; I did say indeed something of it by hear-say; and I did likewise say that Mr. Drake told it me. But I may err in that particular; possibly Mr. Drake did not tell me so; for as I apprehend, I said I did think it did put a necessity upon the king to agree with the

Scots: and then having seen some papers, and conferred with that relation others have made, I collected the truth of them, as far as I did know. But now I am upon my oath; let me therefore come to the matter: I speak those many things as I heard, which I cannot affirm upon my oath.

*Ld. President.* We must judge of what you have heard.

*Potter.* My Lord, I cannot be certain of that.

*Att. Gen.* That is receded from. But what do you know of Mason's coming over here?

*Potter.* I know nothing of Mason: I saw him but once; and at that time there past nothing between us of public concernment, as I remember.

*Att. Gen.* What was the answer that was returned to that which Mason did bring?

*Potter.* That I can speak nothing to of my own knowledge: I heard he was come hither; and was here to see the tempers of men, and to see how things were like to go.

*Att. Gen.* My Lord ask him from whom he came.

*Potter.* It was said he came from my lord Piercy. But these things are so remote from me, that I can say nothing to them of my own knowledge.

*Att. Gen.* My Lord, let him speak what he knows about reconciling the Presbyterian parties.

*Potter.* I think others can speak more close to that; I can say nothing but by hear-say: I heard that Mason did endeavour here to find how the affections of the people stood; and whether there was a necessity that the king should comply with the Scots, or with the Cavaliering party; and that he found a necessity of complying with the Scots.

*Ld. President.* What assistance should he have from hence?

*Potter.* I know no more of Mason than this.

*Att. Gen.* My Lord, ask him if there were not some letters returned by Mason, in answer to what he brought?

*Potter.* Not that I know of.

*Ld. President.* Did you hear of it?

*Potter.* I think I did hear of it: but I cannot tell by whom: I think by William Drake.

*Att. Gen.* My Lord, ask him whether he knows of any petition sent to the king of Scots.

*Potter.* I do not know of any; but have heard so.

*Ld. President.* By whom did you hear so?

*Potter.* By William Drake.

*Ld. President.* Who did Drake say did carry the petition?

*Potter.* I cannot tell.

*Att. Gen.* Do you know of any answer returned from Piercy and Jermin?

*Potter.* I know nothing at all of these things.

*Ld. President.* Were not you invited to the meeting? *Potter.* Yes, I was.

*Att. Gen.* What did he tell you?

*Potter.* Nothing at all: we had nothing but common discourse there.

*Att. Gen.* Who was there?

*Potter.* There was William Drake, major Alford; and I think Mason and Titus were there.

*Ld. President.* Do you remember any more?

*Potter.* I do not remember; nor can I certainly say they were there.

*Ld. President.* Were not you pressed or moved to go to Jersey?

*Potter.* Not that I know of.

*Ld. President.* Did not Titus offer to go?

*Potter.* I cannot well tell: but at that time or some other, he either was spoken to go or offered to go.

*Ld. President.* How long ago.

*Potter.* My Lord, I cannot speak this on my own knowledge; but I have heard say, I think a month after the time.

*Ld. President.* Had he any money to bear his charges?

*Potter.* I know of none.

*Att. Gen.* Well, what meetings afterwards was there in Mr. Love's study?

*Potter.* I have been at Mr. Love's several times.

*Att. Gen.* My Lord, ask him whether he was not present in Mr. Love's Study, when a letter was there read from Titus; and who was present there; and what were the debates upon it; and what was the Contents of the letter; and whether it was not for some to come to Calais to him.

*Potter.* The Letter I well remember: I cannot say it was Mr. Love's Study; nor can I say it was in his house: I do not know Mr. Love was present. The letter, I have seen it, or heard of it: it did desire some to come to Calais about the treaty: and I remember well what major Alford told me he did go to him.

*Ld. President.* What was the contents of the letter.

*Potter.* I cannot well remember that I have seen it, but I have either seen it or heard of it; I cannot tell which.

*Ld. President.* You must be true to the state, and speak the truth.

*Potter.* My Lord, I would be true to the state, and to the gentleman at the bar too. And, my Lord, I can say no more to it: I either saw it, or heard of it, I cannot tell which. I am upon my oath, my lord: the letter did desire some body to come to Calais to him.

*Att. Gen.* Was not this meeting in Mr. Love's Study?

*Potter.* I cannot say it was in his house: I rather think it was not.

*Ld. President.* Was he present?

*Potter.* I cannot say he was present; I think he was not present: I think Mr. Alford was sent to the tavern.

[The Papers of captain Potter's Examinations were here produced by the Attorney-General, and by the Clerk read to him.]

*Att. Gen.* My Lord, these were his examinations.

*Potter.* I intreat this may be remembered, which I premised at first, I had a latitude then, that I have not now: I am now upon my oath, and desire to be true to my own conscience, and to the state, and to this gentleman. I have made (it is true) such a confession as this is; and I believe the greatest part of it to be true according to the latitude I spake it in: but now I am upon my oath, and now I am to speak knowingly. The substance of the thing is true; I believe that he was sent, and sent upon such things. So much I do verily believe to be true, upon my oath; but of the places I cannot speak.

*Att. Gen.* Alford did go to Calais, and return: and how many days was it between his going and returning? And where did he give an account of what he did receive from Titus at Calais?

*Potter.* It is a hard matter for me to speak to the time; I think about a week. And for the relation he made when he came back, as I take it, I met him at the King's Head in Watbroke upon his landing; whether he made the relation to me there, or afterwards at Mr. Love's; whether I heard of the meeting, or whether I was at the meeting, I cannot say. I am sure he himself made me the relation; but whether there, or any other where, I cannot make out.

*Att. Gen.* Upon your oath, did not major Alford make return of the answer in master Love's study?

*Potter.* I cannot say it; but I think it was there. *Att. Gen.* Was master Love present?

*Potter.* I think he was present; and I think it was in his house: I am sure major Alford made me a particular relation between him and I.

*Att. Gen.* Was Sterks, the Scotch agent there, or no?

*Potter.* I cannot say he was.

*Ld. President.* Was it read in master Love's study?

*Potter.* I cannot say I was there.

[His Examination was again read to him.]

*Att. Gen.* What was the substance of the King's Letter?

*Potter.* It is so much out of my memory, that I scarce remember there was a letter; it is so much out of my mind.

[More of his Examination was read to him.]

*Ld. President.* What do you remember of his now? Is this true?

*Potter.* I remember I have heard as much; and I believe it is true.

*Ld. President.* Have you not heard the letter read?

*Potter.* I do not know there was a letter sent; nor do I know there was a letter read. I desire to speak the truth: I had a latitude then, that I have not now; I had then such an information shewed me, and I spake to it so far as I thought it was true. These papers you shew me, as my Examination, were not of my making.

*The Clerk.* Look upon them; Is not this our hand?

*Potter.* I know it is my hand.

*Att. Gen.* My lord, I did go to the Tower to him, and was with him, and did examine him. My lord, here be those things will prove it, that himself did confess, and said it was true: and he took time himself to inform himself, and had (as he said) other men's Examinations and Informations by; and he did add and amend, and gave it under his own hand. This is the truth, after several examinations. And he had papers by him, and did correct them himself, and brought them under his own hand written by himself, these very things. And, my lord, ask him whether he did not write these things first with his own hand, and bring them to the committee of examinations.

*Lord President.* Whether did you not bring in your own examinations, and what you could inform, written by your own hand?

*Potter.* My lord, that is my hand; and what is there I must own as mine. But I hope you will let me distinguish between what I delivered then as I heard it and thought, and what I deliver positively. I do say it is true now, as I have heard.

*Lord President.* Why did you not say 'of hearsay' then, as well as now?

*Att. Gen.* Upon the oath you have taken, whether do you not know this of your own knowledge?

*Potter.* Upon the oath I have taken (and I desire to speak it in God's presence) I do not remember that I saw the letter from the king, or heard the letter read, or the copy; nor can I say Alford told me so much, though I think he did, yet I do not know he did.

*Love.* I desire you would take notice whether this be fair, that Mr. Attorney should help the witness, by putting things into his mouth?

*Att. Gen.* My lord, I can help the Witness by asking him questions.

*Potter.* My lord, no man shall so far tamper with me, as to make me say an untruth.

*Att. Gen.* My lord, pray ask him whether he did not write these papers, most of them, with his own hand.

*Potter.* True; but to open to the committee the ground of this business: but I did not expect to swear to every one of these particulars.

*Att. Gen.* My lord, ask him whether after this return was made there was not a meeting, and instructions made about the commission to be sent to Breda.

*Potter.* My lord, to that, I have heard so much but I cannot speak it positively. I saw no commission, nor instructions: I heard there was both. I do not know by whom I have heard it; I think by William Drake.

*Lord President.* Were you not at Mr. Love's house when they were drawn up, and Mr. Love corrected them?

*Potter.* I never saw the instructions.

*Love.* Nor I neither.

*Lord President.* Did you not hear so?

VOL. V.

*Potter.* I did.

*Lord President.* To whom to be directed?

*Potter.* To capt. Titus.

*Lord President.* And to who else?

*Potter.* The commission and instructions were to be directed to my lord Willoughby of Parham, colonel Graves, major-general Massey, capt. Titus, and alderman Bunce.

*Att. Gen.* My lord, ask him whether he had not heard Mr. Love tell him so.

*Potter.* Never in my life.

*Lord President.* Were you not then present at his house?

*Potter.* I know not that I was; nor can I remember.

[His Examination was again read.]

*Att. Gen.* Whether were you not at Mr. Love's house? And was there not a letter agreed upon to Massey, and Bailey, and Titus?

*Potter.* I have been several times at Mr. Love's house.

*Lord President.* Whether were you not at Mr. Love's house with these correspondents?

*Potter.* I have been several times at his house with them; and I have been oftner there upon other occasions.

*Lord President.* Name them.

*Potter.* I mean with Mr. Love, and Mr. Jackson, and Mr. Robinson, and major Alford, and Mr. Drake, and Mr. Gibbons.

*Lord President.* What was then agreed upon about letters when you were at Mr. Love's house?

*Potter.* I have a very bad memory, I cannot speak to time, and places, and persons; such letters I have heard of were written, I profess I can speak no more knowingly. I never had a hand in any one letter, but such letters I have heard of.

*Lord President.* Upon what account did you meet at Mr. Love's house?

*Potter.* I met there sometimes upon a friendly account, sometimes upon a Christian account, and sometimes to hear news, and sometimes to tell news.

*Lord President.* Where did you meet with these persons, William Drake, and these so often mentioned?

*Potter.* My lord, there was a correspondence in point of news.

*Lord President.* Between whom?

*Potter.* Between capt. Titus there, and Wm. Drake here; and he would tell us many times news there.

*Lord President.* Do you know Titus was employed as an agent hence?

*Potter.* I think he was.

*Lord President.* Had he money collected?

*Potter.* I do not know of one penny I lent him, and I never contributed to him.

*Att. Gen.* My lord, ask him whether himself did not, upon an occasion, contribute 10*l.* and bring it into Mr. Love's parlour?

*Potter.* I confess that.

*Att. Gen.* For a Table-book that was written in sack, do you know of any such thing?

*Potter.* I do, my lord; I went to Wm.

G

Drake in his retirement, and he was writing out of his papers some letters in a table-book, which he told me was in sack, as I take it.

*Lord President.* Why did he write them in sack?

*Potter.* I take it, because it should not be discovered.

*Lord President.* Do you not know to whom the letters written in sack were sent?

*Potter.* I know not; but he told me to Bailey and Titus.

*Lord President.* Where was Bailey and Titus then?

*Potter.* I know not where Titus was, but I think Bailey was in Scotland.

*Lord President.* After Drake was gone, where were your Meetings usually?

*Potter.* Many times at Mr. Love's house.

*Lord President.* When you did meet there, what did you meet upon? Was it not to receive messages from Titus, and Massey, and Bunce, and Bailey, and to return answers?

*Potter.* We had sometimes letters read there, but from whom they came, or to whom, I believe few can tell, I cannot tell; something of news we have heard of affairs; that was the occasion of my coming sometimes.

*Att. Gen.* Did Mr. Love never tell you the occasions of those meetings, and press you to lend money to furnish Massey and Titus?

*Potter.* I can say nothing to that.

*Att. Gen.* What say you to the private fasts? *Potter.* There were private fasts.

*Att. Gen.* What! for a blessing upon the treaty at Breda?

*Potter.* There were fasts kept, but I never understood they were for any other end, but for the sins of, and Judgments upon the nations; and for the most part there have been hundreds of men and women there.

*Att. Gen.* Did Mr. Love often officiate there?

*Potter.* He hath preached and prayed.

*Ld. President.* Did any pray for a blessing upon the treaty?

*Potter.* I cannot say so.

*Att. Gen.* What say you to those letters that came hither after the fight at Dunbar?

*Potter.* My lord, after the fight at Dunbar, there came letters from Bailey, and Titus, and Massey.

*Ld. President.* And where were these published?

*Potter.* My lord, I can say no more; I have heard of these letters too.

*Ld. President.* Were not you present at Mr. Love's house when they were read, or made known there?

*Potter.* Possibly I was: I cannot say I heard the letters read there. I did hear letters by a private hand occasionally afterwards.

*Att. Gen.* By the oath you have taken, were you not present at Mr. Love's house, when those aforesaid letters from Titus, and Bailey, and Massey, were published and read?

*Potter.* My lord, I cannot say I was there, and I dare not say I was not; it is a year ago:

I believe I was there several times when several letters were read, and it may be when those were read.

*Ld. President.* Whether was there not 5*l.* given to a messenger that brought them?

*Potter.* I have heard there was, but I do not know it.

*Ld. President.* Did you contribute any thing towards it?

*Potter.* I think I did contribute 10*s.*

*Ld. President.* Who contributed besides yourself? *Potter.* I know not.

*Att. Gen.* Was there not at Mr. Love's a promise of arms or letters?

*Potter.* I cannot say so.

*Att. Gen.* What can you say?

*Potter.* I have heard there was.

*Att. Gen.* By whom have you heard it.

*Potter.* I cannot say by whom, or who told me so, either Mr. Allford, or Adams or Far, or some of those men that used to meet there; for it was common, when I was not there, for some or other to meet with me.

*Att. Gen.* Did Mr. Love contribute to the messenger?

*Potter.* I cannot say he did.

*Att. Gen.* My lord, I do not ask him one question, but what himself hath confessed.

*Potter.* I do remember such letters I have heard did come, but never saw those letters; I do likewise remember I heard there were 5*l.* gathered for the messenger, and I do believe I contributed 10*s.* towards it.

*Att. Gen.* Who else gave beside yourself, and who received it?

*Potter.* I profess I know not.

*Att. Gen.* Whether was there not a Declaration to the Church of Scotland then published?

*Potter.* The declaration, I know nothing of it; you remembered me of it at the committee, when I was first examined, but I knew nothing of it.

*Att. Gen.* My lord, ask him whether the State and Church did not write for arms and ammunition at that time after the fight.

*Potter.* My lord, I have heard so much, but cannot speak positively or particularly to it; I have heard of such letter, but cannot tell by whom; I saw them not.

*Att. Gen.* To whom were they directed?

*Potter.* I never heard who wrote them, nor to whom they were directed.

*Att. Gen.* Was there not one letter with L. upon it?

*Potter.* My lord, about the letter L. I did receive those letters myself, there was an L. written upon them; My lord, these letters came from Bamfield out of Scotland. There was in these letters a large narrative of the affairs of Scotland, from Dunbar-Fight to the time of the date of them, which I think was about Christmas: This is a thing I know better than, (I am afraid I give offence by saying, I think, and I heard, and that I cannot speak positively; but of this I can speak positively) Bamfield gave an account therein of a narrative of two sheets of paper, and I and another or two

opened them; and I carried these letters to Mr. Love's; there was one or two more with me, Mr. Jaquel, and I think Mr. Drake, I cannot well tell. There was a narrative of the Scotch affairs and a letter from several persons which we suppose to be from Mr. Bailey and from my lords of Argyle, and Lowdos, and Lothian, and others, whose names I do not remember. These letters wrote for 10,000*l.* for buying of arms, and hiring of shipping. These letters we disliked, and we disseuted from them, and agreed to give a negative answer; but we thought fit, for our own safety, to raise some money for this messenger and Bamfield, to which I contributed 10*l.* I carried all these letters to Mr. Love's; one or two were opened, I think we opened them; the narrative and my lord of Argyle's letter I opened, before I understood what they were.

*Att. Gen.* Why did you carry them to Mr. Love's?

*Potter.* There was a great deal of news in them: there was a letter *I.*, and I did in my Examination say; I conceived it was to Mr. Love: but now upon my oath, I do not remember very well, and I do not think it was to Mr. Love. I do confess I carried these letters to Mr. Love's, I and Mr. Jaquel; these letters were opened, but whether Mr. Love opened them, or I, or the other, I cannot tell.

*Att. Gen.* With whom did you leave them?

*Potter.* I brought them away, all of them.

*Att. Gen.* Were they not read?

*Potter.* They were all read.

*Att. Gen.* He confesseth further he paid 10*l.* To whom were the letters directed?

*Potter.* The letters had no direction at all upon them, I believe.

*Att. Gen.* My lord, ask him, whether there was not a sum of 4 or 500*l.* agreed to be raised.

*Potter.* The advice that was given to that, was, That we should do nothing in it, and we did nothing in it more than I tell you; I carried those letters to them, and had discourse of them, and resolv'd to do nothing in them.

*Att. Gen.* Why did you carry them to Mr. Love's?

*Potter.* I went for advice what I should do with them.

*Att. Gen.* My lord, pray ask him concerning the 4 or 500*l.*, and for what; and whether this discourse was at Mr. Love's house. Whether there was not a proposition for raising 4 or 500*l.*, and for whom this was to be raised, and where to be raised, and by what means.

*Potter.* I heard there was, I do not know the place where: to this I contributed 10*l.*, I brought it one evening to Mr. Love's house, and there I left it.

*Att. Gen.* Where was this money agreed to be raised?

*Potter.* I cannot speak to that.

*Att. Gen.* Who took the Subscriptions?

*Potter.* I cannot speak to that neither.

*Att. Gen.* Did Mr. Love contribute?

*Potter.* I cannot say he did.

*Att. Gen.* Was it in his house?

*Potter.* I do not know that I subscribed at all, I do not think there were any Subscriptions; I am sure I never subscribed any name.

*Att. Gen.* When you came into Mr. Love's parlour, and left the 10*l.*, did you not give him a twitch by the hand?

*Potter.* I cannot say so. [His Examination was again read.]

*Ld. President.* Is this true?

*Potter.* The substance of it is true.

*Ld. President.* Of your own knowledge?

*Potter.* Of my own knowledge that I left so much money.

[The Clerk reads more of his Examination.]

*Potter.* This is a section I never worded, or phrased myself; I have heard as much as this comes to, but cannot speak it knowingly.

*Att. Gen.* Did you not write this yourself?

*Potter.* I believe not, I cannot positively say that Mr. Love either drew up the letter, or received the letter.

*Att. Gen.* You say he received the letter from your own hands.

*Potter.* But not the letter from Titus and Bailey.

*Att. Gen.* Do you know of a way of correspondence laid at Kendal, or no?

*Potter.* I heard there was such a correspondence.

*Att. Gen.* By whom?

*Potter.* I cannot say by whom.

*Att. Gen.* Do you know that Groves was sent to look for letters there? *Potter.* Yes.

*Lord President.* Did Mr. Love know of it?

*Potter.* I cannot say he did.

*Att. Gen.* What had Groves for his pains for going? *Potter.* Ten pounds.

*Att. Gen.* From whom?

*Potter.* I paid it.

*Att. Gen.* Did you receive any of it again?

*Potter.* I did receive some of it, I received two 10*s.* by several persons.

*Att. Gen.* From whom?

*Potter.* From Gibbons, and Alford, and Far.

*Att. Gen.* Not from Mr. Love?

*Potter.* I do not know I ever had a farthing from him in my life.

*Att. Gen.* My lord, ask him whether there were not letters returned to Bamfield again, and by whom?

*Potter.* My lord, I did receive a letter that I suppose was to Bamfield.

*Ld. President.* From whom did you receive it? *Potter.* It was left in my shop.

*Ld. President.* By whom?

*Potter.* I cannot say by whom.

*Ld. President.* Whom do you conceive it came from?

*Potter.* I think from Mr. Love or Dr. Drake.

*Att. Gen.* Do you conceive so? My lord, ask him whether Mr. Love or Dr. Drake was not appointed to draw the letter.

*Potter.* When we were together, there was a negative answer resolved upon; and this answer, to the best of my remembrance, was

agreed to be drawn up by Mr. Love and Dr. Drake: but I received this letter.

*Att. Gen.* And who received the 30/.

*Potter.* I cannot tell.

*Att. Gen.* But you sent the letter.

*Potter.* I did.

*Att. Gen.* Ask him whether he did not send for Mr. Love, and what discourse passed between them, since he was in prison.

*Potter.* I did send for Mr. Love, and he did come to me; and I desired his counsel, as a Minister, and I told him upon what score I was questioned; then I was questioned upon Mr. Cook only, and he gave me encouragement only as a friend and Minister of the Gospel ought to do.

*Att. Gen.* What was that?

*Potter.* He wished me to make a Christian use of my afflictions, and gave me some other instructions; we had an hour's discourse, and it was all to this purpose: He wished me to make a Christian use of my restraint, and to labour to get Christian wisdom and fortitude.

*Lord President.* What did he say more to you?

*Potter.* My lord, no more passed between us; and I gave him an account of what questions I was examined upon in Cook's business.

*Lord President.* Did you give him an account?

*Potter.* I have said so, and he did advise me to prudence, and fortitude, and courage.

*Att. Gen.* Did he never advise you to be courageous, and that unless you discovered one another, you were safe enough?

*Potter.* My lord, my keeper was with me and we had no such discourse.

*Att. Gen.* Did he not wish you to be silent?

*Potter.* Either then or since he did tell me there was a letter came from Mr. Drake, that told him, Titus's man had taken some letters from Titus; but he could not conceive how it could concern me.

*Att. Gen.* But did he discover nothing, and wish you to be prudent for yourself, and them?

*Potter.* He did not then.

*Att. Gen.* When then?

*Potter.* I saw him once since; and he told me of Bainfield's man.

*Att. Gen.* How came it about Mr. Love spoke with you?

*Potter.* I did prevail with my keeper to go with me to dinner, and to take a glass of wine, and then I provided for Mr. Love's coming to me.

*Att. Gen.* What hath Mrs. Love said unto you?

*Potter.* I saw her ever and anon.

*Att. Gen.* What hath she said to you?

*Potter.* She hath wished me, with tears, to have a care of her husband, and not to discover any thing; I think she hath.

*Att. Gen.* Did not Mr. Love say then, That he had been at a fast, where you were remembered?

*Potter.* He did so.

*Att. Gen.* My lord, I confess I was with this man in the Tower, as I am bound to do by my place, to examine him; he hath made his

examination before I came thither, and I brought it with me. My lord, I did ask him questions, he did answer me upon knowledge; he did confess the truth, but told them Mr. Attorney General was pleased to help him to particulars, and bring them to his remembrance.

*Potter.* I profess, if it had been to save my life, I could not affirm them; but you putting me in mind of it, I did know of it.

*Att. Gen.* At the Committee of Examinations, then he had more particulars told him, and he did confess he did know them all; and he may give you an account, whether he did not give an account under his own hand? My lord, I am not abused, but the council of state and the parliament are abused; and if this man should do this wrong to Mr. Love, and inform the court and council, and the man he brought upon his life, because he hath affirmed it; and that several times before several Committees; this man must not escape unpunished, if for no other fault but this, to accuse a man before authority, and when he comes to his oath, to deny every word of it. Capt. Fisher will witness, that he did bring all under his own hand, and upon my credit, he did speak as fully as we did open, and much more fully: and I answered upon hearsay, How do you know it? And he said, He did know it, he did remember it, and he put it down positively; and that when Mr. Drake went away, all the meetings were at Mr. Love's house, and Mr. Love did still declare the occasion of the meetings, and the letters were opened by him, and the discourse upon them; and every word he said upon his own knowledge.

*Potter.* I do confess again, that before capt. Fisher and Mr. Attorney did prompt me—

*Att. Gen.* Prompt you, Sir!

*Potter.* Before he did remember me of them, I had forgot them, as if I had never heard them; but it is one thing to remember a thing as I have heard, and as I conceive to be true, and another thing to swear to it positively: and the paper allowed me this latitude; some of it I have heard, the rest I believe, and some I know; and upon this account I believe it is all true.

*Att. Gen.* My lord, 'tis possible I might wish him to express what he did know himself, and what he did know by relation of others, and so did set it down, and he did it fully and clearly; and after all this, brought it in again, written with his own hand, to the council of state. My lord, if you please, capt. Fisher may go for the original under his own hands.

*Clerk.* The Original cannot be found.

*Love.* Here is nothing at all that concerns me about the business of Titus in Jersey, and about the letter from Titus, and the copy of the letter from the King; he tells you he doth not know it was in my house; he tells you it was but a copy, not the original.

Captain Potter withdraws.

[Major Alford called into the Court, and takes his Oath.]

*Att. Gen.* My Lord, let him declare what

he knows, either by himself or others, and of his employment at Calais: make the whole narrative as much as you can remember.

Major *Afford*. My Lord, I was one morning wished to go with William Drake to the Swan at Doggate, hearing there was a gentleman lately come from the Prince, where I should hear all the news from beyond the seas; when I came there, it was one capt. Titus, one whom I had never seen before; and he gave a relation of the good disposition of the Prince, and how inclinable he was to take the Covenant, and to cast off the Cavaliering Party, and those about him, if there were an opportunity to make it known, that there was a considerable party in England that would stick close to the ends of the Covenant. Upon that, sir, myself, and some others that were there, did think we were bound in duty, and in relation to the Covenant, to press the ends of the Covenant, for the Prince to take it, and to prosecute the ends of it. And for that captain Titus said, If we would appoint another meeting, he would draw up something by way of Attestation or Petition to the Prince for that purpose. My lord, we did meet at the Bear in Bread-street, and there he did draw forth something that he had framed to that purpose, and he read it; and afterwards, not at that time, it was agreed upon to be sent over to the Prince. The substance of it was to press the Prince to apply himself to take the Covenant, and to prosecute the ends of it, and to cast off all his cavaliering party about him, which had brought so much mischief to his father, and would do the like to him. This captain Titus drew up, and this, I believe was sent over, for Titus undertook to send it over. I did ask how the Prince should be made to believe, that this coming from an inconsiderable party, as we were, should come under the notice of the Presbyterian party of England, for it went under that notion? He said, he should undertake that by the means of my lord Piercy. And the Petition that was agreed upon, he did send over, I believe; for I did not carry it to the post-house, but he did undertake to do it. Afterwards he went over himself, and when he was over, he had information that there was notice of his being there, and of the business he was upon; and therefore he writ over to William Drake, (as Mr. Drake told me) that he did desire some of us that knew of the business, should be sent over to him, to receive that account from him which he had in the business. So Mr. Drake did persuade me to go over to Calais; and having some business of my own, I did go over to Calais. I went from my house on the Friday night, and I was back again on the Tuesday following; and he did give me an account of that transaction: The substance of it was this: It was about his own troubles he had undergone there by the cavaliering party, in managing that business. He had likewise been imprisoned, and they told him, they would try him as a spy; and that they urged hard against him, and that he was in that condition

till my lord Liberton, the Scotch commissioner, came over; and by this means he had access to, and favour with the prince: and that was the substance of all. He said, the king was averse to the Covenant, not of himself, but by reason of those counsels that were about him. And this was the substance of that account he gave me of his transaction there at Jersey, in reference to the business he went upon: and this he gave me in writing, which I brought over to deliver to Mr. Drake, for it was directed to him, which I did deliver. Afterwards master Drake carried them to master Love's house, where they were read. And that is all as to that business—Then afterwards there was a commission, they called it a Commission, it was agreed upon among us, to be sent over to my lord Willoughby of Parham and Massey, and I think Graves and Titus, that they should agitate and act for us at Breda, and to advise with the Scotch Commissioners that were there, in behalf of the Presbyterian party here in England; and that is all in relation to that. Afterwards Mr. Drake read to me the copy of a letter in Characters, which he had written himself in his own back-shop, which he told me should be sent to the queen, which was to persuade her to persuade the king, as he came that way, to close with the Scots; for that was the likeliest way to make good his own interest; but that was at Mr. Drake's house only between him and I. Afterwards Mr. Drake told me he had disbursed money about receiving of letters, and receiving of news, and did wish me that I would let him have 10*l.*, and said he would speak to some others of his acquaintance to do the like; and if he could get up a considerable sum, I should have part back again; for he said the charge was too great for him to undertake; and I do think he had 10*l.* of me for that. After Dunbar-Fight, there was I and some others at Mr. Love's in his great lower room; where was a letter read, that was said to be from major-general Massey, that gave an account of the business of Dunbar; and also did write for arms, I know not how many thousands; and so that purpose, that they might be provided by the way of Holland. But upon that, all that were there did say—I heard no man speak of providing arms or any such thing. He writ in his letter, that for his own necessities, and captain Titus that was there, that a motion might be made for providing some money to send over for their supply: and it was then said, We were so inconsiderable, and so few, that the sum spoken of could not be done; and therefore it was moved, that every one should do by himself and friends what he could. This was the substance of that.

*Att. Gen.* I believe, my lord, he hath dealt ingenuously with you. This in the general: I pray you ask him, what he knows concerning any letters that should have been sent at the beginning of the change of this government, to Scotland from any part of England?

*Afford.* For that I know nothing, but heard

Mr. Drake say, That he had correspondency with some in Scotland; and I have heard use one Mr. Bailey's name; and he had a cypher which they writ by.

*Att. Gen.* For the Swan at Dowgate, he gave relation of that; but who was present then?

*Alford.* Truly, my lord, it is so long since, that I cannot positively tell; but I am sure I can remember there was Mr. Huntington, and William Drake, and lieutenant-col. Bains; and I cannot tell, my lord, I think there was one Mr. Hall.

*Att. Gen.* Was Mr. Gibbons there or not?

*Alford.* Truly, my lord, I cannot tell whether he was there at that time or no.

*Att. Gen.* My lord, he says Titus at that time did give relation of the prince and his party: Can you remember what that relation was? And do you know whether this was not afterward communicated, and to whom?

*Alford.* I have given you the substance of it; but for communicating of it, I knew it from none but only from those there.

*Att. Gen.* Titus took time to draw it up?

*Alford.* He did so; and at the next meeting at Breadstreet, there were the same men again; and I think at the same time there was col. Barton.

*Att. Gen.* Was there no mention then, (when it was propounded to you to be a considerable party) was it not said the ministers were to be acquainted with it?

*Alford.* It was asked Titus, how the king should be possessed that this came from the Presbyterian party in England, because it was agreed upon that there should be no names used to it? He said there needed none, but only the engagements of the ministers in it.

*Att. Gen.* What ministers?

*Alford.* Truly he did not speak a word of any man that I know of.

*Att. Gen.* Was it not then propounded, that Titus should be sent to the Scotch king before commissioners came to him, so have a correspondency settled between him and some others here?

*Alford.* I cannot say at that time, but afterwards. Whether at that time or any other, I cannot tell; but one time Titus said, he had learned from my lord Piercy, which had hastened him over, that this business was of that concernment, that they did undertake it should be there before the Scotch commissioners did come. And thereupon Titus (as William Drake told me, for this was not at the meeting) was persuaded to undertake to go about that business.

*Att. Gen.* Whether was there not some directions given for a letter to be written to the queen, to prepare the Articles with the Scots?

*Alford.* I cannot say any thing but what Mr. Drake told me privately between him and, as to that purpose, a Letter to the queen.

*Att. Gen.* What was that?

*Alford.* I did tell your lordship.

*Att. Gen.* My lord, ask him whether he was at supper with Titus.

*Alford.* No, my lord, I was not there when he offered himself to go, as I know of.

*Att. Gen.* What money had Titus to bear his charges?

*Alford.* Thirty pounds.

*Att. Gen.* From whom?

*Alford.* From William Drake singly.

*Lord President.* Did not Drake gather it up again?

*Alford.* My lord, I cannot tell; I know nothing of any man, but what I did myself.

*Att. Gen.* We are now speaking of the meeting at Mr. Love's house, and of Titus's letter being read, and he sent. Let him give a particular relation of that again. I make bold to ask him questions to help his memory.

*Alford.* The letter that was read of Titus, was not at Mr. Love's house, as I know of, but Mr. Drake's (for all things came to him, and we knew nothing but only from him, for the correspondency was settled between William Drake and captain Titus) nor at any public meeting that I know of, but what Drake told me.

*Lord President.* But you were at Mr. Love's house, you said but now.

*Alford.* I was, but not upon this account, it was after I had been over; for I do not know that ever I was at Mr. Love's house, or ever spake with him, till I went over; if I have, I have forgot that ever I spake in my life to Mr. Love about it, till after I came from Calais; and then I did bring over a relation, and gave an account of it concerning Titus's transactions.

*Lord President.* That account you gave at Mr. Love's house.

*Alford.* No, my lord, I gave it to William Drake, for it was directed to him; and it was three or four days after that we met at Mr. Love's house, where Mr. Drake read the thing.

*Lord President.* At what time was it?

*Alford.* At the time when the Scotch king was at Jersey.

*Att. Gen.* Whether did you bring from Titus a copy of a letter from the king?

*Alford.* That I forgot; but Titus did shew me a letter, at leastwise he said so, that he had it from the king, that he sent to this Presbyterian party. And, my lord, he did copy out the letter, and the copy he gave me, which I did bring over.

*Lord President.* To whom did you deliver it?

*Alford.* I delivered it to William Drake, I gave it Mr. Drake himself, and I think at his own house; I think it was the same, and that it was read at Mr. Love's house. The substance of it was this, as he told me, That he took in good part the petition or application that was made to him; and if ever God did restore him, and that he was in a condition, then he should think of it.

*Lord President.* What did he speak of a Non-compliance with the present Government, and by whom?

*Alford.* I do not remember a word of that.

*Att. Gen.* What said he concerning the



Scots, and what he would do for the ministers, if God restored him?

*Alford.* I cannot tell any such Passage, nor do I remember the particulars of it.

*Lord President.* The letter was then read, you say?

*Alford.* I suppose it was the same that I gave to Mr. Drake, but I cannot say it was the same, because it was not in my custody.

*Att. Gen.* Did not you propose to send 50*l.* to Titus?

*Alford.* For that, I heard say that there was 50*l.* sent to him; but whether it were or no, I know nothing of it, nor did contribute to it, nor knew nothing of it.

*Att. Gen.* Did not you make a Narrative yourself of what you received by word of mouth from Titus?

*Alford.* It is very like I did speak of it to this purpose I tell you of, I do not know particularly what I said.

*Att. Gen.* Did you not receive an account from Titus of his transaction at Jersey?

*Alford.* I did.

*Att. Gen.* Did you not give an Account of that you received from him?

*Alford.* He gave it me in writing, and I delivered it to Mr. Drake.

*Att. Gen.* But when you met at Mr. Love's house afterwards, did you not make some Narrative of what you received from him by word of mouth?

*Alford.* I had it not by word of mouth, but only by the delivery of papers to me, which he could not bring over with safety.

*Lord President.* Where those Papers read at that meeting?

*Alford.* I tell you, my lord, I delivered them to Mr. Drake, and Drake did read some papers, and I believe they were the same; but I cannot say there were the same, for they were out of my custody.

*Att. Gen.* Who then were there present?

*Alford.* There was Mr. Love, Dr. Drake, Mr. Case, Major Adams, Mr. Gibbons, and captain Far. Truly I cannot particularly tell.

*Att. Gen.* This was given him at Mr. Love's house, and Mr. Love present. My lord, I pray you ask him whether Titus's message was not well approved of, and the letter of thanks to be returned, and the 100*l.* in money.

*Alford.* I do not remember any of these things you speak of now.

*Att. Gen.* What do you remember was said concerning him there?

*Alford.* I do not know what was said; I do not know what any man could say to them which were papers from him: I do not remember any particulars, it is so long ago; I believe now it is two years ago.

*Att. Gen.* Do you not remember that this was one passage in the king's Letter, that the king wished them to send Commissioners to Breda?

*Alford.* I do not remember that.

*Att. Gen.* Was there not a commission at Mr. Love's house agreed upon to be sent?

*Alford.* That there was.

*Att. Gen.* What was to be the effect of that commission?

*Alford.* It was to advise those men to join with the Scotch commissioners, to take advice with them, and to accept the Presbyterian party with the king, in relation to the first petition that was sent.

*Att. Gen.* Was Master Love there?

*Alford.* Mr. Love was there: but I do not know what Mr. Love or any man did direct in it.

*Att. Gen.* Who did correct those Instructions?

*Alford.* I cannot tell.

*Att. Gen.* Who was agreed to prepare the Commission?

*Alford.* I do not know, for I believe it was prepared when it came there; I heard that which we call a Commission read there, but who prepared it, or acted in it, I do not know.

*Att. Gen.* Did Gibbons bring it?

*Alford.* Who brought it, I cannot tell.

*Att. Gen.* Who were the Commissioners?

*Alford.* As I remember, my lord Willoughby of Parham, and Massey, and Alderman Bunce; and whether Titus and Graves, I cannot tell.

*Att. Gen.* Was this in Mr. Love's study, or in another place?

*Alford.* It was in Mr. Love's study.

*Att. Gen.* Was the rough Draught corrected by any body or no?

*Alford.* I cannot tell whether it was or no, nor can I remember any more particulars of it than what I have given you.

*Att. Gen.* What do you know concerning any Instructions to give power to the Commissioners what to do?

*Alford.* At the same time there was agreed upon some Instructions for them to walk by, which was the substance of the Petition which had been formerly sent; that is, it prest the king to take the Covenant, and to prosecute the ends of the Covenant.

*Att. Gen.* Who carried the Commission and Instructions?

*Alford.* One Mason.

*Att. Gen.* Who was that Mason?

*Alford.* I did not know him, but I have heard say he did belong to my lord Piercy.

*Att. Gen.* Was there not at that time some letters propounded to be written to the Queen, and Jermin, and to what purpose?

*Alford.* I cannot tell that any of these things were propounded there, but Mr. Drake had told me, and read to me in characters some that he had writ thither.

*Att. Gen.* And was it sent?

*Alford.* I cannot tell, for it was privately between him and I.

*Att. Gen.* When this Commission was thus brought into Mr. Love's Study, was there not a question propounded, what warrant have we to send commissioners, and by what authority, and what was the resolution upon it?

*Alford.* Well, it may be, but I do not remember it.

*Att. Gen.* Do you remember who went with Mason, when he carried away this?

*Alford.* None went with him but I, Mr. Gibbons did carry the Papers two or three days after that we had them from Mr. Drake, which was this Commission we speak of, to Gravesend, to Mason; for he was at Gravesend before, and there delivered it to him.

*Att. Gen.* What was the effect of these instructions?

*Alford.* The substance of them was, according to the first commission, to press them to use all their endeavour to advise, and take advice with the Scotch commissioners how to press the king to take the Covenant, and to join with the honest party, the church-party in Scotland; that was the substance of it.

*Att. Gen.* Did he not write to you to send money to the king?

*Alford.* I heard Mr. Drake once say, there was a letter from my lord Piercy, to that purpose, but captain Titus himself wrote against it.

*Att. Gen.* What course or way was propounded to raise money?

*Alford.* I know of nothing propounded that way: it was not agreed for me at that meeting to go down, but Mr. Drake suddenly went down, and Mr. Drake alone spake to me.

*Att. Gen.* But he told you it was the first advice of some others?

*Alford.* Truly, I do not remember that he did tell me so: there was a Commission and Instructions read at Mr. Love's, but whether agreed upon there or no, I know not.

*Att. Gen.* What know you since Dunbar Fight?

*Alford.* For that, we met at Mr. Love's house, in his lower room, and there was a letter that was said came from Massey, wherein he gave an account of that business, how many men were lost; and that he did write for arms to be sent, and in his letter did propose a way, as I remember, to be done by the way of Holland: I cannot tell the particular number of arms he writ for, but for arms; and also did speak something in it concerning his own and Titus's necessity, they being there strangers.

*Att. Gen.* There was a proposition made, of raising some money for supply of their necessities?

*Alford.* It was not to raise money, for arms, or any such thing, but only a proposition made for supplying those gentlemen's personal necessities.

*Att. Gen.* And how was that to be done?

*Alford.* It was to be done among ourselves, to raise some money; there was 500*l.* spoken of, but it was impossible for us to do that, for us that were inconsiderable men, being men of mean estates and fortunes, and so it was brought down to a less sum.

*Att. Gen.* What was that sum?

*Alford.* Either 2 or 300*l.* I cannot tell which.

*Att. Gen.* How was that to be raised?

*Alford.* It was to be raised among ourselves.

*Att. Gen.* And did you subscribe then presently? *Alford.* No, I did not.

*Att. Gen.* Who did?

*Alford.* I cannot tell that any did; for I then said, that I did not know that either myself, or any there, was engaged by promise to do any thing for any, only for capt. Titus; for he alone was there upon our interest, and therefore I said, for that I would contribute 10*l.*

*Att. Gen.* How much did Mr. Love contribute?

*Alford.* I do not know of any particular sum.

*Att. Gen.* Did Mr. Love press you to contribute, or move any to do it?

*Alford.* Truly Mr. Love did move to contribution of money, for the purpose we speak of, for the supply of Titus.

*Att. Gen.* Where was Titus then?

*Alford.* I cannot tell.

*Lord President.* Did Mr. Love move it?

*Alford.* Yes, my lord.

*Love.* Was I the first that did move it?

*Alford.* Truly I cannot tell that.

*Att. Gen.* Was it at that time that the letters were read?

*Alford.* It was at that time.

*Lord President.* And was Mr. Love there then? *Alford.* Yes it was at that time.

*Att. Gen.* Do you remember of any Declaration of the Kirk and State read at that time?

*Alford.* No indeed, I do not.

*Lord President.* You did say, that the letter did mention for arms?

*Alford.* But we did all, every one of us disavow that, but only the supply of their particular occasions.

*Att. Gen.* Was there no motion then made for a letter to be written to the Church of Scotland, to press them to union and moderation?

*Alford.* Not that I know of.

*Att. Gen.* Was there not a motion of sending 50*l.* to col. Graves? And what succeeded upon it?

*Alford.* I do not know of any particular, but only of the sum to be raised in respect of Titus.

*Att. Gen.* How should your 300*l.* be disposed of? *Alford.* That I cannot tell.

*Att. Gen.* For whom was it to be raised?

*Alford.* I told the court that it was proposed for Massey, and for Titus.

*Att. Gen.* Did you pay your money?

*Alford.* No, I did not pay it; for I went out of town presently: I did promise 10*l.* and 10*l.* I paid; but I cannot tell to whom I paid it, I believe it was paid by my man.

*Att. Gen.* Did he bring it to you upon account as paid?

*Alford.* I believe he did.

*Att. Gen.* What do you know more?

*Alford.* Truly nothing more.

*Att. Gen.* What do you know of any correspondence settled at Kendal?

*Alford.* Nothing at all.

*Att. Gen.* This was since Dunbar fight. Do you know of any letters that came from the Kirk, or Lowdon, or Aigyle, or any of those?

*Alford.* No, I know nothing of that.

*Love.* You confess you went to Calais, and brought the copy of a letter from Titus: Did I send you to Titus?

*Alford.* No, I do not say you did.

*Love.* It is alledged by this gentleman, that it was sent out of my house: Did I write any letter by you when you went into Holland? And upon your coming home, you say the copy of a letter was read at my house: Will you swear I was in the room at the time when the letter was read? I was in my house, but did not I go often out and in? Sir, I do speak this, because some at the Committee said I went in and out often? Do you swear that I heard the letter read in my house?

*Alford.* Mr. Love, it was read in your study; but that you were there when the letter was read, I cannot tell.

*Love.* He says he cannot tell that I heard the letter read.

*Alford.* I cannot tell whether you might go out.

*Love.* How long ago was this letter?

*Alford.* I think it was at that time the king was at Jersey; I cannot remember the month, I think about two years ago.

*Love.* Was the letter sent to me, or was it received by me?

*Alford.* I did not say it was. I gave the paper I brought over from Titus to William Drake; and some two or three days after, when we did meet at your house, Mr. Drake read those papers; for he told me they were the same, but I cannot tell they were the same.

*Love.* I desire he may be asked, Whether I did give my consent to the sending the pretended Commission he speaks of?

*Alford.* Truly, there was not any man's particulars ent asked that I know of.

*Ld. Pres.* Was it not agreed in the general, that it should be sent over?

*Love.* I pray ask him this question, Did not I dissent from sending the Commission?

*Alford.* I do not remember it.

*Love.* For the business of money, he saith, there was 2 or 300*l.* raised: Do you affirm I raised a penny?

*Alford.* I did not say it was raised, but I say it was there propounded to be raised.

*Ld. Pres.* This he did say, there was a proposal for the doing of it, and you did persuade the doing of it; and he left 10*l.* with his man afterwards.

*Love.* Ask him whether there was not a letter at that time read, that Massey was withdrawn at that time in discontent from the court?

*Alford.* I do not remember that particular.

*Love.* Ask him whether the money was sent to buy arms, or raise forces, or only to supply his wants, he not having a livelihood?

*Alford.* It was not for arms, but it was for Massey and Titus, to supply their necessities.

*Love.* But he proves not that I lent any.

*Alford.* I do not say you did.

*Att. Gen.* Observe, Sir, there was a Letter for Arms at Mr. Love's house read there, and

VOL. V.

Mr. Love did propound 300*l.* to be raised, and pressed the doing of it accordingly. Major Alford did likewise lead 10*l.*; you may believe there hath been tampering with this Witness too. My lord, ask major Alford, whether there was not a letter brought to him by his sister?

*Alford.* My lord, after I had liberty for my wife to come to me, she did give me a paper, which I knew was my sister's hand; if I saw the thing, I could tell, but it did miscarry.

*Captain Fisher.* My lord, the messenger is here in the Court that did take the letter, of which this is the true Copy word for word.

[Major Alford withdraws, and major Huntington is called into the Court, and is sworn.]

*Ld. Pres.* What do you know about Mr. Love's house, about the Commission, and captain Titus?

*Major Huntington.* My lord, I can say that about March, 1648, I met with major Alford, and he told me, that Titus was in town, and asked me if I knew him, and I told him Ay; and asked him where he was? He said he was newly come from beyond sea, from the Fry, there being alderman Bunce. I asked him where he was; he said little to me; but he said he was to meet him the next day at the Swan at Doggate; that there was to be some citizens in order to meet those gentlemen beyond the seas, to speak with him there. I did meet, and the citizens there were col. Barton, col. Vaughan, captain Massey, lieutenant col. Bains, and I think Hollis his man, I am not certain of: but captain Far was there. The business at that time, was only commendations from their friends there; and to tell them that he was commended to their acquaintance. And afterwards, he grew into very high praises of the prince, and that he had the knowledge of it from a Scotch lord, I know not his name. After this he told them the prince was running very unhandsome courses, and they had very great hopes his own inclinations did not lead him to it, but it was the malignant party about him, that had a prevalency over him there, as over his father here; but he did rather incline to join with the Irish rebels, and did believe he would incline that way, unless he could get something from hence, to divert him from it: Whereupon he did hope they would all set themselves that way, and that he would get letters from persons of honour (whom I know not) that should persuade him into a good belief of the Scots, and to take the Covenant. After this, there was a meeting again, I think 14 days after, at the White Hart in Bread Street, and there I met too. In the time that I was there, I did understand there had been a meeting before, in order to the business; and captain Titus did declare, he had now again letters from persons of honour, to send to my lord Piercy, and did hope they would set something a-foot amongst themselves of the like consequence: For Massey, Bunce, and Graves, could see no way under the heavens but for the king

to take the Covenant, and join with the Scots, and to engage the covenanting party here. And to that purpose, he draws forth a paper that did purport, that they were bound in honour and justice, and conscience, and I think loyalty, to maintain him in his just rights, if he would go and join with the covenanting party in Scotland; and that he had no other way under God but that. Which if he did, they took themselves bound in conscience to help him to his just rights. Upon this lieutenant-col. Bains makes objection to it, and said it was a malignant business, and did fear there was no good design in the thing; and thereupon they did break up. I cannot tell whether it was sent or no, for they were afraid he would betray the business.—After that, I was told by major Alford, that Bains told them he was very sorry he should meddle in that business, and that they would never prosper that had any thing to do with him, for that the sins of him and his father were so great: Whereupon they were very wary, and afraid he would discover the business. And he, I think, knew no further. After this, I did understand this letter was sent to the Prince, and I was told so by major Alford, that it was sent in the name of the secluded members, and ministers, and citizens, and soldiery, and noblemen; I remember it fetched a great compass. Whereupon when the Prince saw this letter, and had it from my lord Percy, he stormed at it, and said, Who are these noblemen, and the rest? What can they do for me? Can they raise me ten thousand men? Whereupon there was nothing done; but Titus retired himself to his mother's house, and there lived about three quarters of a year, and came to town after, and did solicit his own business. A little after this, I heard, upon the business of the Scots, that there was another letter sent, that did begin the thing again, and now the Prince had considered of the thing, and sent over the letter, and I heard that it was to the ministers of London. I did not see the letter, but Alford and Drake told me it was so. After this, Titus was sent away, and that with a sum of money, as I heard; who lent the money, I cannot tell, and what sum I know not: But presently after this, I coming to town out of the west in March, 1649, in the beginning of March, the day of my coming to London, after I had been here one or two days at most, I met with Hollis's man in Fleet-street: I do not know his name; he met me, and I asked him what news? He told me, he wondered that I was a stranger, and asked him what news? Saith he, If you come to Mr. Love's house, you shall hear news. What is your business there, said I? He said, it was to pray together, and to hear the news. I went about nine o'clock, and prayer was over, and the news a great part was over: But after I did come there, that I did hear was this: Wm. Drake pulled a paper out of his pocket, that I understood he had put into his pocket, or withdrawn, because of a stranger, and afterwards he took it out again. The substance of the Paper was

to this purpose, as I remember; it was in characters, and pulled out of his pocket, and by him read: 'In the name of the Commissioners commissionating the lord Willoughby of Parham, major-gen. Massey, col. Graves, capt. Titus, and alderman Bunce, in order to the treaty, in the behalf of the well-affected party in England; and these to join with the Scotch commission, according to such instructions that should be therewith inclosed.' And somebody asked him, What power have we to give such a commission? It was answered again by Wm. Drake, that we have the king's command for it, and we have likewise the authority of some prudent Parliament-men, whom we look upon (saith he) beyond the power of them that now sit. Whereupon Mr. Love replies, Come, come, let it go; and after that I knew nothing.

*Att. Gen.* Repeat that again.

*Huntington.* When the question was asked, what power have we to send or give commission? saith Drake, we have the command of the king to do it; besides, we have the authority of secluded Members. Whereupon Mr. Love replied, Come, come, let it go.

*Love.* Pray ask him this one question, were there no speeches between William Drake's words, and those words he pretends were mine?

*Huntington.* I remember none.

[Huntington withdraws, lieutenant-col. Bains is called into the court, and is sworn.]

*Ld. Pres.* Speak what you know of this business.

*Bains.* My Lord, concerning any thing that came from Scotland, I never knew any thing, nor did I ever hear any thing. For Dowgate, I was at two meetings at Dowgate: at the first meeting there was a person that I did not know, which at the second meeting I was told was captain Titus; and he at that meeting, where there was nine, or ten, or more, or thereabouts, he did propose something to be done, in order to the restoring or preserving the Presbyterian interest, by way of application to the King, as he called him, and did advise it to be by way of petition, and that he conceived to be the only way to preserve the Presbyterian interest in England: and that way would be the way to assure him he had a considerable party in England. And he did use many arguments, as a duty lying upon us by our Covenant, to apply ourselves to him, and he offered to draw up a draught of a Petition against the next meeting to that purpose: and he said it was necessary something should be done by some parliament-men, and some ministers, and some citizens, that were leading men, men that thereby he might be assured that he had a party, and that considerable. At the next meeting, which was suddenly after, he did produce a paper, which, as I remember, was in short-hand; a Petition which was to the purpose I have hinted. There were several debates, whether it should be signed or not signed, and myself and two more disliked it; and before he read the paper, he

began to commend the good-nature of the king, what good affections he had; and likewise did say, there was a necessity something should be done to the queen, and Jermin, and Piercy; who, he said, were our friends, that they should stir him up to comply with the Scotch commissioners. And upon this, there was myself, and two more there present (I hope it sat upon them as upon myself), disliked the business; and, from that time, for my own part, I never heard anything. The Heads of the Petition I cannot suddenly remember. This Paper carries the sum and substance of the business.

[The Clerk shews him a Paper, which he had formerly given in.]

*Bains.* This Paper, if it be not interlined since, it was of my own dictating, and writ with my own hand. [He looks upon the paper.] I see no alteration made at all.

*Ld. President.* And this you deliver upon oath?

*Bains.* Yes, upon my oath, to the best of my remembrance. And as to the prisoner, I can say nothing.

[Bains withdraws. Major Adams is called into the court, and sworn.]

*Ld. President.* Declare your knowledge in this business.

*Adams.* Touching alderman Bunce and Mason, I know something by relation touching the correspondence with them.

*Ld. President.* Tell the manner of it.

*Adams.* I conceive it was carried on by Mr. Drake, that is now absent; and in Scotland, by one Bailey.

*Att. Gen.* What do you know of Mason, and of letters sent by him?

*Adams.* Mason I do know, and I do know he did receive letters.

*Ld. President.* From whom?

*Adams.* He said, from my lord Piercy.

*Att. Gen.* To whom were those letters communicated here?

*Adams.* They were communicated to Mr. Drake, and by Mr. Drake to myself, and Mr. Alford, and capt. Potter, and capt. Far.

*Att. Gen.* Was Mr. Love privy to it?

*Adams.* I cannot say that, my lord.

*Att. Gen.* Were there not letters sent to Scotland to them, and back again hither, about sending moderate propositions to the king?

*Adams.* There was such letters.

*Ld. President.* Who writ them?

*Adams.* That I cannot tell.

*Ld. President.* Had Mr. Love a hand in them?

*Adams.* I cannot say he had: I cannot prove a negative, I cannot say he had not.

*Att. Gen.* What know you of the Petition sent to the king?

*Adams.* I know nothing of it, only I was told of it.

*Ld. President.* Who told you of it?

*Adams.* I cannot, my lord, fix it upon any particular man, but I believe I was told of

it by Alford, or Far, or Bains: for I was not there at that time.

*Ld. President.* What do you know about the meeting at the Swan at Dowgate?

*Adams.* My lord, I was not there.

*Att. Gen.* Then, my lord, he may tell you what he doth know.

*Adams.* My lord, upon our meeting in some place or other, I cannot tell where, I cannot tell the time, nor the place, but either at the Swan in Fish-street, or at the Swan at Dowgate, or in Catton-street: in one of these three places, I cannot punctually remember.

*Att. Gen.* Who was at that meeting?

*Adams.* Mr. William Drake, capt. Titus, major Alford, capt. Far, capt. Potter, and myself; and I do not know how many more, or whether any more or no.

*Ld. President.* What passed there?

*Adams.* It was there agreed, that captain Titus should go over to Jersey.

*Att. Gen.* What was he employed about?

*Adams.* The end of his going was to endeavour to work an agreement between the King and Scots, according to the Covenant; that was the end that was propounded. And in order to his going, we did agree to furnish him with money for the present, and made some kind of promise to maintain him while he was out.

*Att. Gen.* What money was he furnished with?

*Adams.* I cannot be punctual in that, but, about a hundred pounds.

*Att. Gen.* Who should pay it.

*Adams.* I paid 20*l.* of it, but I cannot tell who paid the rest.

*Att. Gen.* To whom did you pay it?

*Adams.* To Mr. Drake.

*Att. Gen.* My lord, ask him, Whether when this was sent to Jersey, was there not a return made?

*Ld. President.* Well, go on: there was your twenty pounds gone?

*Adams.* This is the substance of what I can say of his going.

*Att. Gen.* Was this 20*l.* that you laid out of your own, or did you collect it of some of the rest, or did you gather any of it again?

*Adams.* I cannot say that I did.

*Ld. President.* Did you not?

*Adams.* My lord, I tell you the truth, I do not know whether I did or no; for I remember it was determined that we should gather it at that meeting.

*Att. Gen.* Did not Mr. Love know of the collection?

*Adams.* I cannot say he did; it may be he might, but I dare not say upon my oath that he knew of it.

*Att. Gen.* Ask him what return Titus made, what answer and what account he gave?

*Adams.* Major Alford went to Calais to meet Titus, and Titus did send word, that the Council of State heard of his being there, and thereupon desired that somebody might be sent over to him; for he had something to communicate,

which he could not well do by writing, and thereupon Mr. Alford was sent.

*Att. Gen.* My lord, ask him where the letter was read?

*Adams.* The letter that Titus sent, was read by Mr. William Drake.

*Att. Gen.* Where?

*Adams.* At his house, as I think, for I cannot certainly remember. I did not say upon any examination, that it was read any where.

*Att. Gen.* Whether were not you moved to go?

*Adams.* There was some motion to that end, I think in Mr. Love's chamber.

*Lord President.* Who moved it, and where?

*Adams.* Who moved it, I cannot tell; it was moved, I think, in Mr. Love's chamber.

*Att. Gen.* Was Mr. Love there?

*Adams.* He was there.

*Att. Gen.* Did Mr. Love move it?

*Adams.* I cannot say he did.

*Lord President.* He will not say it.

*Adams.* I cannot say it upon my oath.

*Attorn. Gen.* My lord, so much he saith, That it was moved in Mr. Love's chamber; then he may give you an account of Mr. Alford's return, and where the account was given.

*Adams.* The return of Mr. Alford's account was given at Mr. Love's house.

*Lord President.* What was it?

*Adams.* The return he made in general was by a Narrative, and a copy of a Letter from the king. There was with the Narrative that which was said to be the copy of a letter from the king.

*Lord President.* What was the substance of that letter?

*Adams.* The contents of the letter, as I remember, was, First, He expressed a great deal of affection to the ministry of England in general, and promised great favour when he was in a condition to do it, and desired them to continue so that in the way they were in.

*Att. Gen.* Was this letter published at Mr. Love's study?

*Adams.* It was read.

*Lord President.* Was Mr. Love there?

*Adams.* Truly, to be positive that Mr. Love was there, I dare not say; but Mr. Love was there at that meeting, either at the beginning or ending; I ut whether the letter was read at Mr. Love's house, I dare not swear. The narrative from Titus was a very long one, and very well drawn. I cannot give an account of it now; the whole of it was after this manner: to give an account to us of all the transactions that happened since his going out of England, he did give an account of his usage by the cavalier party, that was against the king's agreement with the Scots, because there was some did incline to his agreement with them, and there was another party was much against it; and he gave a very large account of that. After that, he went on describing his disposition and condition.

*Att. Gen.* This was the substance of the

rest. Was there not some propositions for giving of thanks to Titus, for his so-well managing his affairs there?

*Adams.* There was a motion made by somebody.

*Lord President.* Who made the motion?

*Adams.* I cannot tell.

*Att. Gen.* Was not 100*l.* more to be sent agreed upon?

*Adams.* I think so.

*Att. Gen.* There was more money contributed who agreed to lend any?

*Adams.* Sir, to that question, I cannot say who propounded it; but that there was money sent.

*Lord President.* Who contributed?

*Adams.* I did my share.

*Lord President.* How much was that?

*Adams.* As I remember, 10*l.*

*Att. Gen.* To whom did you pay it, and where did you pay it?

[Then they shewed him his Examination.]

*Lord President.* Come, look upon it, and be well advised.

[Adams looks upon his Examination.]

*Adams.* I paid it to Mr. Drake, at his father's shop in the upside.

*Att. Gen.* Next, about the Commission and Instructions to be sent, what do you know of that? When this Letter was read from the king, and published in Mr. Love's study, whether was there not a Commission agreed upon, to give Instructions to treat with the king at Breda?

*Adams.* There was a motion made at Mr. Love's house that there should be a Commission and Instructions drawn and sent. The motion was made at Mr. Love's house; they were there spoken of.

*Lord President.* By whom? Who did the dialogue run between? Did Mr. Love do it?

*Adams.* Truly, for my part, I did not then take such special notice, that I dare at this time, upon my oath, deliver any thing positively against any particular man; but generally all spoke something, as I remember.

*Att. Gen.* Was there any debate to mend the Instructions?

*Adams.* Truly, sir, not as I remember.

*Att. Gen.* Did not Mr. Gibbons bring the rough draught of the Commission?

*Adams.* Truly, I think he did; as I remember, he did. I have spoken of the Commission and Instructions that were debated then and there; and that many of these persons, here mentioned, were there; but that some of them mentioned might not be there then, is very likely.

*Att. Gen.* Was Mr. Love there?

*Adams.* That he was there some part of this time, I am very confident.

*Lord President.* Was it in his study?

*Adams.* It was.

*Att. Gen.* Was there a Commission agreed upon to be sent?

*Adams.* For the word 'agreed,' I cannot tell what to say to it; 'agreed' holds forth as if a Vote passed.

*Lord President.* Was there not a general consent?

*Adams.* Being upon my oath, I desire to be cautious; for I must be tender in speaking the truth in this case; and I do not know what to make of the word 'agreed.'

*Lord President.* Was it approved of?

*Adams.* To my understanding, the thing was thus: That at such meeting as these we were not absolutely formal, as if we had been established by a court of justice to act thus; and that there should be prefaces, and such things, or such methods observed, as that any man undertook to make a preface either at the beginning or conclusion; but it was spoken to by many persons, and by every person spoken to; and in this sense it was agreed.

*Att. Gen.* Were there not Instructions agreed upon; and all this in Mr. Love's study?

*Adams.* It was so.

*Lord President.* Were they not read there?

*Adams.* I think they were.

*Lord President.* Who read them?

*Adams.* I cannot tell who read them; but they were read; and I think Mr. Drake read them.

*Att. Gen.* What was the contents of the Commission?

*Adams.* The contents or the substance of the Commission was to this effect: [Thus he reads out of his Examination.]

'We, the Presbyterians of England, do authorize you, the lord Willoughby of Parham, Edward Massey, Richard Graves, Syllas Titus, and James Bunce, to assist our brethren, the Scotch commissioners, in their Treaty with the King, according to the Instructions annexed.'

I dare not swear it in these words; but to this purpose it was. The substance of the Instructions were to use all the arguments they could, to move the king to give the Scotch satisfaction, and to take the Covenant. Such arguments were mentioned as the then condition of affairs best afforded, particularly how things stood in England at that time: which did all of them cry out for an agreement, and gave them full power as to all things; and what should be concluded by them should be confirmed by these here. But I cannot say so; but what words were, were to this purpose, saying this conclusion, That what was concluded should be confirmed here, I do not remember that.

*Att. Gen.* Was there not some debate by what warrant they should act in this Commission and Instructions?

*Adams.* There were some such words at the meeting.

*Id. President.* What did Mr. Love say?

*Adams.* I cannot remember what Mr. Love did say; or whether he said any thing or nothing at that time: but that there were such words said, I have said; but by whom, I cannot fix it upon any particular person.

*Att. Gen.* Was it not debated by what

warrant they should derive Power to themselves to send this Commission?

*Adams.* There was such language; but by whom, I cannot say; I think by William Drake. It was because the king had writ this letter, wherein he desired there should be such Instructions. There was something spoken of the secluded Members; but by whom I do not know. There was a proposition, whether the authority should be taken from the secluded Members, or from some other.

*Att. Gen.* Did not Mr. Love then say, Come, let it go on?

*Adams.* I dare not say so.

*Att. Gen.* Was it not propounded at the meeting to write to the queen, and to Jermin and Picery for them to mediate, with the king to agree with the Scots?

[*Adams's* Examination was here again read.]

*Adams.* My lord, so much of this as I think to be true, I shall own.

*Att. Gen.* Was not a letter writ from Picery, that a considerable sum of money was fit to be sent to the king? And what answer was given? Was it not to be done till the king and the Scots should agree, and then to raise the money?

*Adams.* That there was such a letter writ, I must needs acknowledge.

*Att. Gen.* Where was it read? At Mr. Love's house?

*Adams.* No, certainly: I only saw it in, Mason's own hands; and I remember he shewed it me.

*Att. Gen.* Next, ask him, whether there was not a letter written about August last to some here, that Massey had back-friends in Scotland, complaining he could not be promoted there?

*Adams.* I did understand there was such a letter; but by what way I do not know.

*Att. Gen.* Was not the letter communicated at Mr. Love's house? And were not you present, when this letter was read at Mr. Love's house, wherein Massey complained he had back-friends in Scotland?

*Adams.* No, certainly: that letter was not to my remembrance read there, I heard of such a letter, but saw it not.

*Att. Gen.* My lord, ask him, whether he was not appointed to draw up some letters?

*Adams.* There were some I should have had a hand in drawing.

*Att. Gen.* Who were appointed with you?

*Adams.* As I remember, Captain Potter, Captain Massey, and Mr. Gibbons.

*Att. Gen.* But was there no meeting upon it? Was Mr. Love named?

*Adams.* Mr. Love was not named.

*Att. Gen.* Was there not one Sterks, a Scotch agent here, that kept intelligence from Scotland?

*Adams.* I know there was such a one, we took to be an agent here.

*Id. President.* Did he meet at your meetings?

*Adams.* Yes, he did meet sometimes.

*Att. Gen.* Was he at Mr. Love's house at any time?

*Adams.* That he was.

*Att. Gen.* When the act came forth for banishing the Scots, was there not a collection for his charges? And were not you at Mr. Love's house when it was agreed to?

*Adams.* I was not.

*Att. Gen.* Did you contribute money?

*Adams.* I did contribute ten or twelve shillings; I cannot tell which.

*Att. Gen.* What discourse upon Dunbar fight was there from this person that is already spoken of?

*Adams.* This is the thing: if you please to help my memory; for there are so many particulars in this correspondency, that I cannot tell whereabouts it is I am to speak to; I am very uncertain whereabouts it is I am to speak to.

*Ld. President.* Speak the certainty as it is in your breast.

*Adams.* My lord, if it be doubtful to me, how can I be certain, and charge it upon my memory?

*Ld. President.* Speak the truth.

*Adams.* I will speak the truth.

*Ld. President.* Do so then.

[Here again *Adams* looks upon his Examination.]

*Adams.* There is some of it I did set down, that I dare not own upon my oath: I then did deliver it so, when I set it down.

*Att. Gen.* Did Mr. Love know that this Scotchman was the Scotch agent? Did you not take notice that Mr. Love took notice of him?

*Adams.* I do think he did; as far as I understand, he did.

*Att. Gen.* Did not Mr. Love generally tell you the cause of the meetings?

*Adams.* No, Sir.

*Att. Gen.* Did you not hear Mr. Love say, that this Steeks was the Scotch agent.

*Adams.* I never heard Mr. Love say so; but I knew this, that by our usual meetings Mr. Love did understand him, as I did, to be the Scotch agent.

*Att. Gen.* How often did you meet at Mr. Love's house?

*Adams.* I cannot tell: It may be seven, or eight, or ten times: an uncertain time.

*Att. Gen.* He was at Mr. Love's study?

*Adams.* Whether so many times, I know not.

*Att. Gen.* My lord, ask him whether it was not at Mr. Love's study, when money was propounded to be raised for Massey and Titus?

*Ld. President.* Was that in Mr. Love's study?

*Adams.* I cannot tell whether it was in his study, or in the lower room: I am apt to believe it was in the lower room.

*Att. Gen.* Was Mr. Love there?

*Adams.* Certainly he was there.

*Ld. President.* What was the contents of the letter?

*Adams.* The contents of the letter I cannot remember.

*Att. Gen.* Whether did it not declare the poverty of his condition? And was it not after Dunbar fight?

*Adams.* Yes, it was.

*Att. Gen.* Was this letter from Massey read at Master Love's house? Was this for money?—*Adams.* It was.

*Ld. President.* Was it agreed for money to be raised?

*Adams.* If you take the word 'agreed' as I formerly propounded, it was so.

*Att. Gen.* How was the money to be raised, and in what manner?

*Adams.* It was by those that were privy to the contribution.

*Att. Gen.* Was not Mr. Love there? And did not he write down the sums that were to be contributed?

*Adams.* This I must needs say, That master Love had papers in his hand, and he did write something; but I did not see what he did write: And every man did write that was there.

*Att. Gen.* Did not you conceive so, That master Love summed up every man's sum? Did he put the letter of their names before them, when he writ the sums?

*Adams.* I cannot say that.

*Ld. Gen.* Was not there a letter penned by master Love and doctor Drake?

*Adams.* To that question, I must say there was a letter; but I cannot deliver it upon my oath that it was penned by master Love or doctor Drake: But it was taken to be so; and I thought it was so.

*Att. Gen.* To whom was that letter directed?—*Adams.* I cannot tell to whom.

*Att. Gen.* To whom was it declared to be directed? To whom was it declared to be written?

*Adams.* To the General Assembly and Kirk of Scotland.

*Lord President.* Was this at Mr. Love's house too?—*Adams.* It was so.

*Att. Gen.* Was Mr. Love present, and did approve of it?

*Adams.* Mr. Love was present at sometime of this meeting. The reason why I thought it to be of master Love's or doctor Drake's drawing, was nothing but merely the language of it, it being in order to promote the ends of the Covenant; and all the whole language was couched to that purpose; and taking notice of the want of respect to Massey and the English, and of their being beaten.

*Att. Gen.* My lord, this is very high: For he tells you this letter was approved of, and directed to be sent; and this was after Dunbar fight, after we were engaged in blood.

[Here *Adams* read out of his Examination, as followeth:]

*Adams.* There was also a large letter, in the nature of a Declaration, penned by master Love and Dr. Drake, and approved of by most



of the Presbyterian party, ministers, and others, and directed to the General Assembly and Kirk of Scotland, subscribed by none: Which contained the substance of what was declared by Titus and Massey; but durst not promise any great sums of money till they appeared more considerable, and grew nearer action. The business required higher spirits than was for the present; and the business required a considerable sum: But to leave no means unattempted when the business was feasible." [So far he reads.]

*Att. Gen.* Major Adams is now upon his oath to tell you.

*Adams.* My lord, as well as I remember, it did put forth much after this sort: But I cannot swear it in these words; but that is the substance of it.

*Att. Gen.* Was not this agreed and declared at Mr. Love's house, that such a letter should be written to the honourable committee, and to the Kirk?

*Adams.* I answer that, after the same manner as all other things are agreed at such meetings as this is: But I have no ground, and do not know why I should say master Love and Dr. Drake penned it.

*Att. Gen.* Ask him for the substance of the letter; whether it were not as he hath told you; and whether he did not say they could not promise a considerable sum of money.

*Adams.* Certainly, either in that letter, or some other, there was some such expressions.

*Lord President.* Well, it was about that time, and in that letter, or in some other letter, and at Mr. Love's house.

*Att. Gen.* My lord, ask him if there was not an agent come from Scotland, and a way laid at Kendal for a correspondence between these gentlemen here and some of Scotland; and whether one Groves was not sent thither.

*Adams.* That was something obscure: That there was such a thing, I do verily believe, because it went amongst us for a truth; but how to make it out for a truth, upon my oath I cannot tell.

*Lord President.* Did Mr. Love know of it?

*Adams.* I do not know.

*Att. Gen.* Ask him what he knows concerning col. Bamfield's man coming hither.

*Adams.* Concerning that, I know nothing. But I confess I had some item that at that time there was something found. And this is all I can say to that; I cannot guess the time.

*Att. Gen.* Was it after the fight at Dunbar?

*Adams.* Yes, that it was.

*Att. Gen.* Were there meetings at Mr. Love's house?

*Adams.* I cannot say all: But all that I know of were.

*Att. Gen.* Ask whether upon the large letter Massey did not write that things were well settled in Scotland.

*Adams.* Many of these things were understood so, and taken for granted amongst us; but I can say no otherwise: I thought it to be so; but I know not.

*Att. Gen.* Were you not present at Mr. Love's house, when those letters were read, that they were in a hopeful condition?

*Adams.* I cannot say so.

*Lord President.* What can you say?

*Adams.* As before, That it went for a truth amongst us: And that, is as much as I can say to it.

*Att. Gen.* Was there not a large letter inviting your friends to union?

*Adams.* I understand the other letter to be this you propound to me now.

*Att. Gen.* Now we speak of a letter from alderman Bunce, and others.

*Adams.* I cannot speak particularly to that; for I did not see them; but they were told me by one or other of those that were of the correspondence: And this is all I can say.

*Lord President.* What is the truth? Do you conceive it is so?

*Att. Gen.* My lord, we shall not trouble him with that. My lord, ask him one question more: What did Mr. Love tell you, that if the Presbyterians got the upper hand again?

*Adams.* Those words, I think, did but amount to this, That if the Presbyterians were in arms again, by the blessing of God, the cavalier party might be prevented from getting the day.

*Lord President.* Who do you mean by the correspondents?

*Adams.* By correspondents I mean Alford, Potter, Far, &c.

*Lord President.* Was not Mr. Love one of them?

*Adams.* I took him to be so, my lord.

*Love.* My lord, I pray ask him, whether any of these pretended or supposed letters were ever received by me, any one of them, or that I writ one of them, or intended one of them.

*Adams.* I cannot say that ever I saw him do any such thing; nor did I ever see him write any.

*Lord President.* But you saw the letters there?—*Adams.* That I have said.

*Love.* Ask him whether I gave my consent to the sending away of this he calls a Commission and Instructibus, about the time of the Treaty at Breda.

*Adams.* No, I will not swear that; and upon my oath I cannot.

*Lord President.* Will you not? I will press you to nothing. You said even now, you did not know he did send them away; but you did say he was privy to them, and to the debates of them. Did he declare any dissent?

*Adams.* I cannot say that.

*Love.* Will you ask him this question? Whether he read the letters that he pretends were sent into England or Scotland, or whether he heard them read?

*Lord President.* That he swears.

*Adams.* I did not swear that these were the contents of them exactly: I was there when these letters were read.

*Love.* He only heard them read.

*Lord President.* If there were half a score

that had correspondency, and received letters, and come together, and one of the most confident men read them; will any man say that he will not believe these were right reads? Such a hear-say as this, is such a hear-say as you may take notice of.

*Love.* But let him prove how it was a correspondency on my part.

*Adams.* I did not say that Mr. Love was one of the correspondents; I deny that I said so: I said I conceived him to be so; but that is not that he was so.

*Ld. President.* They did debate together, and met together, and received instructions; and therefore he may very aptly conceive he was a correspondent.

*Love.* Doth he swear that I assented?

*Adams.* I did not swear so.

*Love.* He saith money was sent to Titus; pray ask him whether by agents I employed.

*Adams.* I cannot say so.

*Love.* Here is no proof at all that ever I received a letter, or writ or sent any letter. Pray ask him if I knew before they came to my house, that they would bring such letters with them. Do you swear that I was present in the room at the time that the letters after the defeat at Dunbar were sent, wherein there was, as you say, a promise of assistance?

*Adams.* You were there some part of the while.

*Love.* Ask him whether he was not threatened with death in case he would not, and promised favour in case he would, bring in evidence against me.

*Adams.* I cannot say I was threatened with death to that end.

*Love.* I shall bring a witness that shall prove from his mouth, that he hath confessed, if he did not bring in evidence against me, he should be hanged.

*Adams.* It is true, Percival did come to me, and I did say to him, that upon examination, I did say, if I were not ingenuous, I was threatened to be hanged.

*Att. Gen.* When a man is a traitor, and doth confess, he deserves mercy.

*Love.* Ask him whether he hath not received money to give in this information against me.—*Adams.* I have not.

*Love.* Did not some messenger come to you, some months ago, from some members of the Council of State, and told you you were poor, and should be ruined if you did not confess it? He had three messengers sent unto him from the Council of State, or some of them, that told him, if he would not confess, he should be ruined.

*Att. Gen.* Did you receive money, or were there promises made to you, to testify against Mr. Love?

*Adams.* Upon my oath I did not.

*Love.* Hath he never come to Mr. Scot's chamber? Did he not come a month before I was committed, being brought there by major Cobbet? And whether he hath not re-

ceived money from major Cobbet? I desire that major Cobbet may be called upon his oath, to know whether he hath not given him money to bring in information against me: For he hath taken notice of all facts, and of all things done, and hath brought all to Mr. Scot. I know, by information, that this Adams is a hired witness. Sir, this man is a Toland and a Sanballat: Some men have bled this man against me. I desire major Cobbet may be called.

*Ld. President.* He did, and might do it: But did he it to testify against Mr. Love? I hope a state, that watches the nation, may watch for the safety of a nation.

[Mr. Cobbet, a major of the army, is called into the court, and is sworn.]

*Love.* Pray ask him whether he hath not at any time, within this three months, given any money to major Adams, to acquaint Mr. Scot, or the Council of State, with this design, as it is called.

*Cobbet.* My lord, I must and do deny that which this gentleman doth aver. And truly I wonder at his boldness, in the presence of this honourable court. I do know major Adams, and have known him a long while; and commiserating him, as being a prisoner, I lent him ten pounds; but for no consideration that he should betray Mr. Love, or any man. I paid the money to his wife.

*Love.* He paid as he saith; how then did he lend it? And he paid it to his wife: That was to cover the bribery. But did not you discover to this man, if he would reveal it to Mr. Scot, what recompence he should have of him? Did not you, walking in the fields with him, desire him to reveal what he knew; and promised him if he did, he should be a man preferred?

*Cobbet.* I have been acquainted with major Adams this four or five years, and met with him in the behalf of the Presbyters, understanding there was something was driven on dangerous to the commonwealth; and I thought I was bound in duty to requeite them, if it were possible, for their pains of discovery. And I laboured with him that he would deal so honestly with himself and the commonwealth, as to let the commonwealth know what he did know of this design. Accordingly he gave me some notice; and I said to him, major Adams, if I find you ingenuous, if there can be any thing that I can do for you, I shall be ready to serve you by night and by day.

*Love.* It appears then that the Ten Pounds was not lent to major Adams, but was paid him for his discovery: So that it is clear he is a hired witness. And have you not brought him to Mr. Scot's chamber with promises of preferment?

[No answer to that question.]

[The lieutenant of the Tower is commanded to withdraw his prisoner; and the court adjourns till to-morrow.]

*The Second Day's Proceedings, July 21, 1651.*

The Court being sat, col. West, Lieutenant of the Tower, was commanded to bring forth his Prisoner; and Mr. Love was brought to the bar.

Master Jaquel was called into the Court, and the Clerk tendered him his oath; and Mr. Jaquel spake to the Court to this purpose: That there were many oaths abroad, and he could not tell what to say to them; and he desired to be excused. The Lord President told him, that he could not be excused. Mr. Jaquel said he was a Prisoner, accused of the same offence that Mr. Love was accused of; and that he conceived he was not a competent witness against him. The Court again pressed him to take his oath. Mr. Jaquel said that he durst not in conscience swear against Mr. Love; and therefore desired it might not be pressed upon him. The Court still persisted in it, that he must take his oath, and witness what he knew. He answered, he would speak the truth of what he knew, as well as if he was under an oath. The Court told him that could not be; for if he did not swear, what he should say could not be received as any thing in matter of Evidence. Mr. Jaquel still persisted in his refusal. When the Court saw he could not be otherwise prevailed with, they fined him 500*l.* for refusing to swear. And Mr. Jaquel, after he was withdrawn out of the Court, was called in again, and pressed to take his oath; and was told that the Court had fined him 500*l.* for refusing to swear; and again asked him whether he would swear. Mr. Jaquel then, when the oath was read to him, did not swear in that manner as the other witnesses did, but only put his hand to his buttons. And when Mr. Love asked him whether he was under an oath, he answered that he was as good as under an oath. But the Court not being satisfied with that answer, pressed him further; and then he did say he was sworn, and was under oath.

*Id. Pres.* Declare now what you know of this business.

*Mr. Jaquel.* My lord, for the paper I was examined about, as for knowing Titus, I never saw him in my life but one quarter of an hour in a private house, and I knew nothing of his business any where. For the other, Alford coming over with letters, I was at Mr. Love's house, and when I was there, there were several men there.

*Att. Gen.* In what part of Mr. Love's house?

*Jaquel.* I conceive in his chamber; for I went up to several that were there, whose names I can positively say, for two or three of them, though I cannot remember the other absolutely, though I conceive most I have named in my examination were there; capt. Potter was there, and Dr. Drake and major Alford, and Mr. Love was there sometimes, though divers times he went out, some coming to speak with him.

VOL. V.

*Att. Gen.* Was there not a copy of a letter, said to be sent from the king, read there?

*Jaquel.* I remember no such thing.

*Att. Gen.* Was there not a Narrative?

*Jaquel.* Yes, from Titus, wherein he declared the king's inclinations to make peace with the Scots, but that his wicked council about him did hinder it.

*Att. Gen.* Was not this of what Titus had related from Jersey, the Narrative of what had passed between him and the king there?

*Jaquel.* I think it was.

*Att. Gen.* Was not major Alford sent to receive an account from him at Calais?

*Jaquel.* William Drake did tell me so afterwards.

*Att. Gen.* Did major Alford deliver no account there?

*Jaquel.* I think it was major Alford read the Narrative.

*Att. Gen.* Did he make no relation by word of mouth?

*Jaquel.* Truly I cannot remember.

*Att. Gen.* You cannot remember it was read?

*Jaquel.* I am sure it was read, and at Mr. Love's house.

*Att. Gen.* And he was present sometimes?

*Jaquel.* Yes, sometimes.

*Att. Gen.* What money was there agreed upon to be provided for Titus?

*Jaquel.* I know of none; it was moved by captain Potter, that there might be 40*l.*, but I know of none; nor was it agreed by Mr. Love, Mr. Drake, or myself, that we should lay down any at all.

*Att. Gen.* Did you not meet with William Drake, and desire to go along with him to see Titus?

*Jaquel.* I did so, but I think Drake desired it: I met him in Newgate-Market, and, saith he, I am going to see Titus, go along with me. I said I never saw him, nor did I know him: Says he, You shall not stay at all. Whereupon he went and found him in a chessmonger's house in Newgate-Market.

*Att. Gen.* What discourse had you?

*Jaquel.* He said he was newly come out of Holland, and he had been with the king, and he was a man of excellent parts for his years; and that he was inclinable to what was good, but that he had such desperate evil council about him; and that he did much pity him, and that his clergy especially was wicked: and he propounded nothing to us, nor did I ever see his face afterwards; and this is about two years and a half ago. And for any other meetings at the Swan-Tavern, or for any agents, I never met him, or saw him.

*Att. Gen.* Do you not remember at any meeting, that there was money propounded for captain Titus, or for Alford's being sent over to Calais? Speak what you know of that, and by whom it was told you.

*Jaquel.* Major Alford himself told me he was to meet his son, and he went over upon that score; but after he was gone, William

Drake told me he was gone to see or meet captain Titus, I am not certain of the words; and when he did come again, which was the next time I heard of him, then William Drake comes to me, and desired me to go along with him, for I think he went up and down to every man.

*Att. Gen.* You think then that Wm. Drake was the prime man.

*Jaquel.* Yes, he was the actor and agent that moved all.

*Att. Gen.* When Alford returned, he desired you to go with him.

*Jaquel.* To Mr. Love's house.

*Att. Gen.* What was done at Mr. Love's house?

*Jaquel.* There were some papers read, which Alford as I take it, read, or William Drake, I am not certain which; but read it was of a relation, that Titus came out of Jersey, and had seen the king there, and the Scotch commissioners; and that the king had a great inclination to agree with the Scotch commissioners; and that he was a man of excellent inclinations and parts, and had a great desire to agree; but his council, and wicked crew about him, would not let him: and he said, as I remember, that the king was a kind of a prisoner with them there, and said, his council did hinder him, or else, if he were from them, he would agree with the Scotch commissioners.

*Att. Gen.* You say this paper was read, this narrative was read in Mr. Love's house; was not Mr. Love present?

*Jaquel.* I am not able to say he was: when I came in, I remember he was not in the room, and he was there two or three times while I was there, but he was several times called out.

*Att. Gen.* Do not you know there was an agreement of a letter written back to Titus.

*Jaquel.* I can remember no such thing, but I think William Drake told me so, as I remember, but that was two years ago, I do verily believe by what I conceived, was of his writing.

*Ld. Pres.* I could wish that men's consciences could not be scrupled to believe so much of a minister, more than of a magistrate: I hold it pernicious doctrine for any man to think he is bound more to obey the minister than the magistrate; I ask you then before the magistrate here who was present at that meeting?

*Jaquel.* William Drake, I am sure, and major Alford was there, and capt. Potter, and several others, as I remember Master Jenkins.

*Att. Gen.* This was in Mr. Love's house, was it not in his study?

*Jaquel.* I cannot tell that. I say as I conceive, that Master Jenkins and Master Case were there, but positively I cannot say it; and Mr. Jackson and Mr. Nalton I think.

*Att. Gen.* What say you of Mr. Watson?

*Jaquel.* I think he was there.

*Att. Gen.* What say you of Mr. Herring?

*Jaquel.* I think he was.

*Att. Gen.* What say you of Mr. Cauton?

*Jaquel.* In truth I cannot tell.

*Att. Gen.* What say you of Mr. Robinson?

*Jaquel.* I think he was.

*Att. Gen.* What say you of Mr. Drake?

*Jaquel.* Yes.

*Att. Gen.* Was colonel Vaughan there?

*Jaquel.* Yes, I conceive he was there.

*Att. Gen.* Was Mr. Jackson there?

*Jaquel.* Yes.

*Att. Gen.* Were capt. Far and capt. Potter there?—*Jaquel.* I believe so.

*Att. Gen.* Was Mr. Gibbons there?

*Jaquel.* I cannot tell.

*Att. Gen.* What say you of Mr. Sterks?

*Jaquel.* No, Sir, I do not know it.

*Att. Gen.* Did you not know him to be the Scotch agent? Was he not taken among you to be an agent from Scotland?

*Jaquel.* Yes, he was a Scotchman.

*Att. Gen.* And for contribution of money, what money did you pay, and to whom?

*Jaquel.* Two five pounds to Mr. Drake.

*Att. Gen.* For what use?

*Jaquel.* For charitable uses.

*Att. Gen.* Then he asked it of you so, or for that purpose; but afterwards, what did you learn it was employed about?

*Jaquel.* Sir, he did not tell me how he did employ this money; but afterwards I heard him say, that he had sent Titus money.

*Att. Gen.* What did you contribute to Sterk's going into Scotland?

*Jaquel.* Ten shillings.

*Att. Gen.* And who else did contribute, that was there? And how much was the sum that was collected?

*Jaquel.* I cannot tell.

*Att. Gen.* How much do you guess, or have heard?

*Jaquel.* Four or five pounds, I think.

*Att. Gen.* Ask him, who gave the Scotchmen money?

*Jaquel.* Truly I did give several Scotchmen money, both to poor ministers, and others that were banished by the act, because I knew they were very poor, and knew not how to get away; and I did it out of charity towards them.

*Ld. President.* Because the state had an ill opinion of them, therefore you had a good opinion of them.

*Jaquel.* There was one minister that had twelve children that was banished.

*Att. Gen.* Were you at any meetings at Mr. Love's after Dunbar fight?

*Jaquel.* No, not I.

*Att. Gen.* At what fasts were you at? And who officiated at those fasts?

*Jaquel.* I was at major Adams's and colonel Barton's.

*Att. Gen.* Who did exercise at those fasts? Was Mr. Love, Mr. Jenkins, Mr. Case, any of them?

*Jaquel.* I believe they were, I conceive so, I profess I cannot remember: I believe Mr. Jenkins was there.

*Att. Gen.* Was not Mr. Love one of them?

*Jaquel.* Yes, he was.

*Att. Gen.* What was the occasion of those fasts?

*Jaquel.* I know no particular occasion, but for the good of the two nations.

*Att. Gen.* How do you know they were for the good of the two nations? Was it not for an agreement between the king and the Scots?

*Jaquel.* I confess it was for the good of both nations, as both nations are the church of God, and both profess themselves protestants, and of one religion; and I conceived it was my duty to pray for the good of them both.

*Att. Gen.* But was there not some expressions for a blessing upon the treaty at Breda?

*Jaquel.* I cannot remember such expressions; for in such duties I desired to have my heart lifted up unto God: And, my lord, it is a great while ago.

*Ld. President.* Will you say your heart is lifted up unto God, when your understanding is in your heels?

*Jaquel.* My lord, I do not remember one passage in prayer a week after.

*Att. Gen.* That is in ordinary meetings, but this is for both nations: but by what did you know that this was for the good of both nations, and why was it pretended to be for the good of both? And, my lord, why they should not meet before, but just at that time, and at a private fast?

*Jaquel.* I think, that since the nations of England and Scotland were at odds, I have been at twenty fasts.

*Att. Gen.* My lord, ask him, Whether he were not late with Potter, and did not meet with him about letters from Bamfield, and whether they went to read them?

*Jaquel.* This was about February or March last, he told me he received letters, and desired me to go along with him to Mr. Love's, and after Dr. Drake came in, and then these letters were read, and I profess I know not from whence they came, nor the man; and so did Mr. Love declare, That he never saw, nor knew, nor heard of Bamfield before.

*Att. Gen.* Did he not make mention of parties in Scotland, That one party was for the King, and another for the King and Kirk, and a third neither for King nor Kirk?

*Jaquel.* Yes.

*Att. Gen.* But who were those he named, that were men for the King?

*Jaquel.* I think Hamilton, and his party.

*Att. Gen.* And who for the King and Kirk.

*Jaquel.* Argyle and Lesley.

*Att. Gen.* And who neither for King nor Kirk?—*Jaquel.* Straughan and Car.

*Att. Gen.* What did he tell you of the young king's escaping?

*Jaquel.* Something there was in that, but he was fetched back again.

*Att. Gen.* What said he of Argyle?

*Jaquel.* Nothing at all, as I remember.

*Att. Gen.* Was there not an expression, That they were now agreed to receive in the whole nation, unless it were those that were notoriously scandalous and excommunicated?

*Jaquel.* I believe there was.

*Att. Gen.* Did it not mention 5,000*l.* for providing of shipping?

*Jaquel.* Yes, in the narrative or letter, whether there related at that time, I know not.

*Att. Gen.* And what mention was there made, who were fit to command in England, if that party should come from thence into England?

*Jaquel.* I conceive there were three noble-men.

*Att. Gen.* Name them.

*Jaquel.* My lord of Suffolk, my lord of Warwick, and my lord of Manchester, or either of them.

*Att. Gen.* That was propounded by Bamfield; but I hope those lords were more noble than to do any such thing. Was there not another letter that came with that of Bamfield's, sent by my lord Argyle, and it was only, That there should be an approbation of him? And was this letter likewise read at the same time, and at the same place?—*Jaquel.* Yes, my lord.

*Att. Gen.* What was then propounded for money to be raised for Bamfield?

*Jaquel.* Truly, capt. Potter did make mention for 40*l.* to be raised, 10*l.* for col. Bamfield's man, and 30*l.* for Bamfield himself: but that business at the reading was wholly declined, and absolutely refused by all, to act any thing in that relation in which it was sent over. Whereupon capt. Potter did move, That if nothing were done in that, whether it were not convenient to send the messenger something to bear his charges: says he, If you will pay the messenger 10*l.* and send Bamfield 30*l.* I will give the messenger the 10*l.* But there was no agreement, nor conclusion I know of, no bill of exchange was sent, but capt. Potter said he would lay down 10*l.*

*Att. Gen.* But no body spake against capt. Potter's laying down of 10*l.*; and it was propounded to you to lend 10*l.*, and you said, you would consider of it: But did Potter lend it?

*Jaquel.* I cannot tell that, my lord, he said he would do it.

*Att. Gen.* My lord, let now Master Jaquel tell you what was the cause why they did refuse to do any thing in the letter about 5,000*l.*; what was the cause upon the debate between you at Mr. Love's house, why you did refuse to do any thing about the 5,000*l.*

*Jaquel.* The debate was soon over, for we absolutely refused it, we would not meddle in it, not liking the business; it was a trouble, I am confident, to them that heard it read.

*Att. Gen.* You do not remember that ever any body did acquaint the magistrate with the design in working from Scotland?

*Jaquel.* No, not I.

*Att. Gen.* Did not some say, that Bamfield was a Malignant?

*Jaquel.* I cannot tell, but I never heard of him before.

*Att. Gen.* Were you not told he was a Cavalier, and of the king's side, and that that was the true reason why they would not trust him?

*Jaquel.* I do not remember any such thing.

*Att. Gen.* Did Mr. Love agree for 10*l.* for Bamfield's man, and 30*l.* for Bamfield?

*Jaquel.* No, I cannot say so.

*Att. Gen.* Did not major Alford tell you, upon his return from Calais, That he was sent thither to take an account from thence?

*Jaquel.* He did not, but Wm. Drake did tell me that he was gone to Calais to speak with capt. Titus.

*Att. Gen.* And to take an account of the transaction of Jersey?

*Jaquel.* Truly, Sir, I cannot say that; but Wm. Drake told me he was gone thither to speak with Titus, and this is above two years ago that Wm. Drake told me so.

*Att. Gen.* To what end?

*Jaquel.* To tell and hear news.

*Att. Gen.* What did he do more?

*Jaquel.* I profess in the presence of God, I cannot tell, Sir, I beseech you; for in the paper, I told you before, there were some circumstances, and something that I cannot say; but it was to this purpose, To speak with Titus, to hear the news from Jersey; but I cannot say certainly that word.

*Att. Gen.* We do not press you to the word, but to the effect of it: My lord, I think Mr. Jaquel hath given an account already, that this relation was at Mr. Love's house. Mr. Jaquel, let me bring one thing to your remembrance, if it be true: At your meeting at Mr. Love's house upon this business of Bamfield's Narrative, you say, 30*l.* was moved to be sent to Bamfield, and 10*l.* to his man.

*Jaquel.* Yes; by capt. Potter.

*Att. Gen.* And when it was then said, it was thought fit by Mr. Love, Mr. Drake, and capt. Potter, that it should be so done; whether did you not all agree it should be so done?

*Jaquel.* No, there was no agreement, but it was thought convenient, or to that purpose.

*Att. Gen.* It was thought convenient by all the company present?

*Jaquel.* Truly, Sir, there was not much regard taken in that business, nor was there much done; for we did not stay long, but there were such words.

*Att. Gen.* But by all present?

*Jaquel.* Yes, there were such words.

*Att. Gen.* Whether were not some friends at dinner at Dowgate, and was not Mason there?

*Jaquel.* My lord, there was a gentleman there, I cannot say who he was, nor did I see him before or since.

*Att. Gen.* Who did they tell you he was? Did they not tell you Mason?

*Jaquel.* I profess I cannot remember that, nor can I tell, but I conceive it was so.

*Att. Gen.* In your Examination you say it was Mason.

*Jaquel.* I said, I conceived so.

*Att. Gen.* Why did you believe so?

*Jaquel.* I cannot tell, but as I remember, Wm. Drake told me so.

*Att. Gen.* Whether when Bamfield's letter came, and the letters from my lord of Argyle,

Lowdon, and others came, was there not a letter from Bailey?

*Jaquel.* I do not remember, my lord.

*Att. Gen.* Nor from the General Assembly?

*Jaquel.* I do not remember any such thing.

*Att. Gen.* Bethink yourself, you are upon your oath, whether he that brought the letters from Bamfield, did not bring letters from Bailey, and from the General Assembly?

*Jaquel.* I cannot remember there was any such thing spoken of there.

*Att. Gen.* Was there no expression of letters of thanks for the good affection of the Presbyterian party here, and encouragement to persevere?

*Jaquel.* I do not remember any such thing.

*Att. Gen.* Were there no promises, that when they by their endeavours should get a Parliament in England, that they would reimburse all that was laid out?

*Jaquel.* I do remember no such thing.

*Love.* I would ask him some questions; and the first is, Whether he hath spoken this as a mere relation, or whether he owes all this he hath spoken, as under an oath.

*Att. Gen.* We are past that, my lord, he did say, he was under an oath.

*Love.* If he say so, I am concluded.

[Mr. Jaquel made no Answer to this.]

*Lord President.* You have asked two Questions; in a few words: for the first, Whether he spake it under an oath? You know that time was spent to declare it before he began: if you ask of his own knowledge, you mistook it; for he saith something he hath by relation, and some that he knows. This he hath taken notice of, what should we further examine over the same thing; for he saith some of his own knowledge, some by relation from particular parties, and some from parties he calls not now to mind; and it was declared by the court, that he was a witness, and the court accepted him.

*Love.* I desire your lordship to ask him this question, whether the supposed Narrative that he speaks of, that Alford said he brought over, and read at my house, was read at my house; or only by Alford, and so brought over as news?

*Jaquel.* In truth, my lord, I cannot tell that.

*Love.* He speaks of Storks a Scotchman; I desire your lordship to know whether he knows, or can affirm by the oath you say he hath taken, that he was a Scotch agent.

[No Answer to that Question.]

*Love.* Sir, ask him this question; he mentions a Fast at major Adams's, or col. Barton's and that for the good of both nations, because he thought they were the Church of God: whether there was any intimation in that meeting, that it was under this notion, for the good of both nations; whether that meeting was for the Scotch nation to invade the English nation?

[No Answer to that question.]

*Love.* He said (if I have taken him rightly, and if not, I desire your notaries to inform me better), that Mr. Love did not agree to such a sum as forty pounds, and afterwards he said,

that all there said it was convenient : now would ask how these two can agree together ?

*Lord President.* You are right ; for the thing of agreement he disclaimed totally.

*Love.* Then I did not agree to it.

*Lord President.* No, nor any else.

*Love.* But afterwards he says, that they did conceive it was convenient. Now I pray ask him, how he knew that I thought it was convenient ?

*Jaquel.* I cannot say any thing that Mr. Love did say it was convenient ; but it was not dissented from nor spoken against by any, as I remember.

[Mr. Jaquel withdraws. Col. Barton is called into the court, and is sworn.]

*Att. Gen.* My lord, let col. Barton tell you what he knows of the meeting at the Swan at Dowgate.

*Col. Barton.* My lord, I was there a little while after the death of the late king. I was going into Cannon-street, and met with William Drake ; he desired me to go with him to the Swan at Dowgate. I told him I had a little business in Cannon-street, and I would be there by and by. I staid about half an hour about my business, and went then to the Swan at Dowgate, and there was to my best remembrance (for positively I cannot say) Wm. Drake, and one a stranger, major Huntington, and lieutenant. col. Bains ; and there was one capt. Titus, as was said, and major Alford, and I do not remember who else were there. My lord, at that time truly I was under a defect in my hearing, and since that I have lost an ear, through a huge heat, and cold taken. But, my lord, I not coming but to the middle of the discourse they had, and not perfectly hearing, could not well judge of their discourse : but afterwards I asked Wm. Drake, what the intent of the meeting was ? He told me, that their intentions were to make some addresses or applications (some such word it was) unto the Prince, to take him off from his malignant or evil council about him, and to put him upon such as would be honest and better counsellors. And this is the substance of what I then understood from Wm. Drake. My lord, I think two or three days afterwards, I know not which, there was a meeting again at the White Hart in Basing-lane-end, at the corner of Bread-street. There were, I think, most of them that I have named at the first meeting : I am sure William Drake was there, and capt. Titus, and lieutenant. col. Bains, and major Huntington ; I cannot tell whether Mr. Alford was there or no, but these I am sure were there. I did not come to the beginning of that meeting ; neither, the paper had been read before I came in, to my best remembrance : but I asked Wm. Drake what was the meaning of that meeting ? He told me, it was to the same effect that they spake of before ; and they had thought to send somebody over to the Prince, to persuade him from that condition. A while after I met with lieutenant. col. Bains, and truly I did ask him more fully of the circumstances of

that meeting : he told me something, that they intended to make use of my lord Piercy and Jermin, and those about the Prince, which he disliked. Truly, my lord, it troubled me extremely, to think that they should make use of such ill instruments to persuade the king, and I said, I thought it was not well. And the next time I said to Wm. Drake, you have not done well, for it is not a Christian way we take, to make use of such men as these to persuade with the king ; for do you think that my lord Piercy and Jermin, and those men, will ever persuade the king to leave themselves, and their own counsels ? So he put me off, and from that time he was a little more shy of me. Afterwards he did secretly and cunningly get from me 10*l.* and came under a pretence to supply a friend in necessity ; and I said to him, you have money of your own. Says he, I have not so much as I must need supply him with ; and he could not do it of himself, for fear it should be missed. My lord, I asked him what friend it was. Nay, saith he, you cannot know that, and you cannot have it till he is in a condition. To tell you truly, he had been a good customer to me, both for himself and friends, and I was loth to deny him it, supposing I should have it again. I afterwards did not, to my knowledge, meddle or make at any meeting ; I was never at any of those meetings after the business at Basing-lane, because I disliked them ; but afterwards I did suppose that this 10*l.* was for captain Titus ; for I did put it to him, and said, I am afraid you did furnish Titus with that 10*l.* What then, said he ? Then I shall require it again of you. So he put me off, and ran out of the land. My lord, for any other meetings, transactions, or knowledge of any other thing from the time of the meeting in Basing-lane, I know none. For the prisoner at the bar truly I do not remember, and I am confident I was never at his house in my life, nor changed one word with him.

*Att. Gen.* Did you meet with Titus in Fleet street ?

*Barton.* I did, my lord, and I asked him whether the king that was dead (for I knew he was much about the king, because I had heard it)—and I asked him, I say, whether the king was a man of those parts he was reported to be. Titus told me, not only of his parts, but virtues. Truly I suspected then, that Titus was not the man he seemed to be, and I feared he was a cavalier in his heart ; and truly that did occasion me, with the dislike of others, to leave their company.

*Att. Gen.* There were sometimes private fasts at your house ; what was the occasion of them, and who spoke to you for them ?

*Barton.* My lord, I do not remember the party that spake to me. I am not certain whether it were master Vicars, but cannot positively say it, or whether it were by sir Matthew Brand, or by whom they desired to meet ; they met in a room at my house, to humble themselves before the Lord : and I cannot say

any thing of the fast, because I had customers, and I did think I was bound to serve my calling; and I was not there above half an hour, and it was up and down, off and on. There were divers ministers, who did exercise at that time.

*Att. Gen.* Who did exercise at that time?

*Barton.* I was not there much of the time, but I think Mr. Jenkins, and to my best remembrance Mr. Love was there; there was Mr. Tate the parliament-man, to my best remembrance: I think Mr. Jaquel was there, and there was sir Matthew Brand.

*Att. Gen.* What other ministers were there?

*Barton.* I think Mr. Case, and to my best remembrance Mr. Robinson; but I am not certain.

*Att. Gen.* What was the occasion of your Fasts, and at your house?

*Barton.* I knew no occasion, because I was not there; but I have heard a servant of my house, who was there, give this relation. Mr. Jenkins began in this manner; 'O Lord, thou knowest we are not met to put up complaints against any, but to humble ourselves before Thee, and to pray that the sins of the land may be pardoned.' But I do not remember there was any word, but for the pardoning the sins of the nation.

*Att. Gen.* Was there no sins named in particular?

*Barton.* My lord, I do not remember.

*Att. Gen.* My lord, ask him whether any body hath been with him, to call for any money for any parties beyond sea; for Massey, or any others.

*Barton.* I shall give you a true narrative of that. I understood, my lord, that after the prisoners that were taken at Dunbar were come down the river, there were divers citizens both men and women, that came to see them, and made a relation of their misery to be such, as I have not heard; and there was one among the rest, that said there was a piece of meat reached down among the prisoners, and two or three catching at it, it fell down among the dung and they took it up and eat it. There were divers did move for a contribution to them, and it was a pretty while before I did contribute any thing: there was capt. Far with me, and desired me to give him some money, and he did not propose the use; but to my best remembrance, it was either for charitable uses, or for some in misery. Now I was loth to ask him for what charitable use, because I did not desire to be known to give such a sum of money to the Scotch prisoners. I had a little money which I had devoted to charitable uses in my own purpose: When the parliament granted my petition for re-imbursing the money I lent, I did promise 50*l.* to charitable uses; and this, I confess, I did intend for the Scotch prisoners, but was loth to ask him, because I would not be thought charitable to your enemies; but did it not under that relation.

*Att. Gen.* Mr. Jaquel, you know William Drake and Mr. Love very well, do you not

know that Mr. Drake and Mr. Love were very familiarly acquainted?

*Jaquel.* I must needs say, Mr. Drake would be acquainted with all the ministers in London; and I cannot say he was more acquainted with Mr. Love than any other minister.

[Captain Far is called into Court and is sworn.]

*Att. Gen.* My lord, let him acquaint you with what passed at the White Hart in Bread-street.

*Capt. Far.* I desire the benefit of my Papers.

*Att. Gen.* At whose request did you come to the White Hart in Bread-street, and when was it?

*Far.* By William Drake.

*Att. Gen.* Was that the first time you were acquainted with any thing of this nature, for carrying on and prosecuting of an order, to the furtherance of an agreement between the Scots and the king? What do you know of that, at what time was the meeting?

*Far.* It was about two years since.

*Att. Gen.* What was the discourse at that meeting?

*Far.* It was the drawing-up of some heads of a letter, which might be sent to Scotland.

*Att. Gen.* What was the effect of it?

*Far.* It was to this effect, to the best of my memory; for it is so long since—

[Here captain Far was at a stand, whether through infirmity of speech (for he seemed to be slow of speech) or otherwise, I cannot say; and he, or the Attorney-General for him, made great use of the papers of his examination.]

*Att. Gen.* To desire them, the better to bring them to an Agreement that there might be moderate propositions.

*Far.* It was to moderate their desires in the agreement between the king and the Scots.

*Att. Gen.* What to do?

*Far.* That they might abate of their demands.

*Att. Gen.* Of their former demands, that they might be the more like to agree; was it not so.

*Far.* Yes, my lord.

*Att. Gen.* Was it not propounded likewise, that some should be sent to the king, to persuade him to give satisfaction to the Scots.

*Far.* It was propounded by Titus, but not approved of.

*Att. Gen.* But did you not agree to send to the Scots that you did agree to, and were there not heads which Titus, or Drake, did undertake to write, and afterwards were drawn up?

*Far.* I saw no letters.

*Att. Gen.* But did not Drake tell you he had sent them to Master Bailey in Scotland?

[Captain Far being at a stand, the Attorney-General asketh him again:]



*Att. Gen.* Did not William Drake tell you, a letter was sent accordingly into Scotland.

*Far.* Yes, he did tell me he had sent letters.

*Att. Gen.* My lord, let him give your lordship an account before the treaty of Jersey, where Drake met with him, and what he propounded to him, whether to send to Jersey, and what persons, and upon what message.

*Far.* Mr. Drake did say, that capt. Titus did say, it was requisite for one to be at the treaty at Jersey; and I had it from Drake, that Titus did undertake to go himself thither.

*Att. Gen.* What was his employment to be there, and what money was to be raised for him? Did he tell you he wanted money?

*Far.* After Mr. Drake desired I would help him to ten pounds, and Titus was in want of money, to relieve his necessities: and upon this request I did leave 10*l.* in Mr. Drake's warehouse.

*Att. Gen.* Was Drake present?

*Far.* I think he was. I was promised it again, but never received it.

*Att. Gen.* My lord, let him inform, after this negotiation of Titus was ended at Jersey, whether there was not a letter written by Titus, and whether this was not read in the presence of Mr. Love, and some others, and whether at Mr. Love's or no?

*Ld. Pres.* Upon the ending of the Treaty at Jersey and Breda, were you not present at Mr. Love's house, when it was signified from Titus, that it was not convenient for him to come into England, because he thought he was discovered to the Council of State, and desired somebody to be sent to Calais, to take an account there of his negotiation?

*Far.* Yes, my lord, I was there.

*Att. Gen.* Where, at Mr. Love's house?

*Far.* Yes.

*Att. Gen.* In what part of his house, whether in his chamber or study?

*Far.* In his study, as I remember.

*Att. Gen.* Was the letter read there, and who read it?

*Far.* W. Drake read it.

*Att. Gen.* What was the substance of the letter, as you remember?

*Far.* It was for sending one over to Calais.

*Att. Gen.* Was Mr. Love present when this letter was read?

*Far.* Yes, sure, he was present.

*Att. Gen.* Was it agreed that one should be sent to Calais, to take an account of it?

*Far.* It was desired, and I was propounded to go.

*Att. Gen.* Who named you to go?

*Far.* Mr. Drake.

*Att. Gen.* What was the occasion that maj. Alford did go?

*Far.* It was his son's being there, that was gone from him.

*Att. Gen.* But then it was agreed that Alford should go? When Alford did return from Calais again, and there was an account given of his employment, where was this account

given? And where were those papers read, that did give the account?

*Far.* It was given at Mr. Love's; but I cannot say he was present at that, for he was absent sometimes. I cannot be positive to say he was present; I do conceive he was present, but cannot positively say it.

*Att. Gen.* What was the substance of the Account given by Alford or Drake, or who read it?

*Far.* It was a Narrative that he had been at Calais, and what entertainment he had.

*Att. Gen.* Was there a copy of a letter brought thither, written from the king to the presbyterian party?

*Far.* I cannot say he brought it.

*Att. Gen.* What was the substance of the letter?—*Far.* To send commissioners to the treaty at Breda.

*Att. Gen.* What else was in the letter. Did not the king of Scots declare in the letter, that he would give satisfaction to the Scots, and in order thereunto he desired commissioners?

*Far.* It is so long since, that I cannot remember it.

*Att. Gen.* I ask you, whether it were not to this effect, to declare that he was willing to give satisfaction to the Scots, and to that end desired the presbyterian party to send Commissioners to Breda?

*Love.* This is gross darkness, for you to dictate words to him, and then to say, Was it not thus, or to this effect? and so to put in the mouths of the witnesses what you would have them say.

*Att. Gen.* When you go in darkness, it is gross treason.

*Love.* Eight witnesses have not proved that I either writ letter, or received letter, or lent money.

*Att. Gen.* What was the effect of the letter?

*Far.* It is so long since, that I cannot speak particularly; but it was to send commissioners.

*Att. Gen.* The copy of the letter that came from the king by major Alford?

*Far.* I do not say so, sir.

*Lord President.* Such a letter as they conceived to be brought from him, as they read.

*Att. Gen.* What was that?

*Far.* That he had been with Titus, and did bring the Narrative from him, or to that effect.

*Att. Gen.* Was it not to be communicated?

*Far.* Yes, it was so.

*Lord President.* What was the Narrative read from Titus? Who were present at this meeting?

*Far.* There were several there? but I cannot positively remember any.

*Att. Gen.* Was Mr. Love there?

*Far.* I cannot say he was.

*Lord President.* Was Dr. Drake there?

*Far.* I cannot say positively that he hath been at any meetings.

*Lord President.* When you were at this meeting, and major Alford returned this at Mr. Love's house, was Dr. Drake there?

*Far.* I cannot say it.

*Lord President.* Was Mr. Jenkins there?

*Far.* I cannot say it.

*Lord President.* How many were there?

*Far.* About ten or twelve.

*Att. Gen.* Ask him, whether this meeting, when this letter came from the king, advising to send commissioners to treat with the king at Breda—whether was there not a commission named, and persons named to treat?

*Far.* W. Drake read papers; but it was not agreed upon by the company, because private persons could not give commissions.

*Lord President.* Was it not debated at that meeting for a commission to be sent accordingly?

*Far.* Wm. Drake read papers there, that was in the nature of a commission, but it was not agreed upon by the company, because private persons could not do such a thing.

*Lord President.* Was it not in order to the treaty?

*Far.* It was to advise with them about the treaty.

*Att. Gen.* Was it not read in the presence of the company?

*Far.* The Commission and Instructions were read in the presence of the company; but they were not agreed upon.

*Att. Gen.* Was it not in the name of the Presbyterian Party in England?

*Far.* As I do remember, the Commission was in the name of the Presbyterian Party; for I did but only hear it read.

*Love.* Let him speak *viva voce*.

*Far.* To the best of my remembrance, it was for the Presbyterian Party; but positively I cannot say so. My lord, it is two years since, and, as near as I can remember, it was so.

*Lord President.* The commission, you say, was not agreed to; but the Letter and Instructions were?

*Far.* Wm. Drake did undertake to draw them up.

*Lord President.* Were they drawn up and sent?

*Far.* I am not able to say they were.

*Lord President.* Who were to be the commissioners?

*Far.* My lord Willoughby of Parham, alderman Bunce, major-gen. Massey, col. Graves, and capt. Titus.

*Att. Gen.* What were they to do?

*Far.* To advise, but not to treat in the behalf of the Presbyterian Party.

*Lord President.* Not in the behalf of the Presbyterian Party?—*Far.* No.

*Att. Gen.* Was there not an Agreement of letters to be sent to the queen, and no Proposals that way?

*Far.* No, my lord.

*Lord President.* What was the substance of that letter read?

*Far.* It was, as I remember, to have the queen persuade the king to give satisfaction to the Scots in their just demands.

*Att. Gen.* Was it not moved then to be debated what power they had to send a Commission, and by what authority they should do it, and by whom was it spoken?

*Far.* It was demanded, what authority had private men to send commissioners?

*Att. Gen.* Did not you go afterwards with some over into Southwark?—*Far.* Yes.

*Att. Gen.* Where did you go?

*Far.* I went with major Alford, and with alderman Bunce his son; and I went to Gravesend.

*Att. Gen.* What other company was there?

*Far.* Nobody else; nor had I gone, but at the request of master Alford.

*Att. Gen.* Did you know that Mason went?

*Far.* There was no such man went along with us.

*Att. Gen.* Did no body tell you that Mason went with the Instructions agreed upon?

*Far.* There was a gentleman we met with at Gravesend, that I conceive to be that Mason.

*Att. Gen.* Did he carry the Instructions?

*Far.* I cannot tell.

*Lord President.* Did nobody tell you so?

*Far.* Not as I remember, I did not see any delivered to him.

*Lord President.* Do you believe he carried them, out of these circumstances you heard?

*Far.* Yes, I believe he did; I am upon my oath, and to say positively, I cannot.

*Att. Gen.* Were there not letters left at your house, and for whom, and what did you with them?

*Far.* There was at my brother's house letters left, but they were returned.

*Att. Gen.* But for whom were those letters?

*Far.* They were directed to Wm. Drake by Titus.

*Att. Gen.* Were you at col. Barton's house at the Fast?

*Far.* I was.

*Att. Gen.* Who officiated there? Was Mr. Love one of them?

*Far.* I cannot say positively, I believe Mr. Love did.

*Lord President.* Do you believe Mr. Love was one of them?

*Far.* I conceive he was one of them, and Mr. Robinson.

*Att. Gen.* Did he not pray for a blessing upon the Treaty between the king and the Scots?

*Far.* That was done, but I cannot say it was by Mr. Love; but these words were said here.

*Att. Gen.* Were you at a meeting at Mr. Love's, after the Fight at Dunbar, a remarkable one to this nation?

*Far.* I was there, but came in late.

*Att. Gen.* Were you there, when a letter was read from Massey?

*Far.* I did not hear it read.

*Lord President.* What do you know of it?

*Far.* There was such a letter came, to assist the king with money and arms; but it was not agreed upon.

*Lord President.* Do you swear such a letter came?

*Far.* I cannot swear positively.

*Lord President.* Did the gentleman tell you so?—*Far.* He did tell me so.

*Lord President.* The letter did write likewise for arms and ammunition, did it not?

*Far.* Yes, and for money.

*Lord President.* Did not Mr. Love tell you, they could not do it?

*Far.* I did understand it was Mr. Love.

*Att. Gen.* Did not Mr. Love tell you, they agreed to raise a sum of money for Massey, and Titus, and Graves, or some of them?

*Far.* Yes, he did.

*Att. Gen.* What was the sum of money, and for whom was it agreed upon? Did Mr. Love tell you so?

*Far.* I say, Mr. Love did tell me it was agreed upon for the sending of some money, whether 250 or 300*l.* I cannot say positively; and it was to relieve Massey and Titus in their necessities.

*Att. Gen.* Did not Mr. Love move you to contribute to this? And what did you contribute?

*Far.* Mr. Love asked me, and I did promise 5*l.*, and brought 5*l.* And laid it down upon his table.

*Att. Gen.* Who was in the room then?

*Far.* There were several.

*Lord President.* Do you know none of them?

*Att. Gen.* Mr. Love saith, he hath neither writ, received, nor sent; but he doth not say, he did not mend letters.

*Far.* I brought 5*l.* in a paper, and laid it upon his table.

*Lord President.* And was he in the room?

*Far.* Yes, my lord, but I cannot say any else was.

*Att. Gen.* I could tell you who there were more; Mr. Case was there too: My lord, ask him if it were not agreed between them, that it should be so brought.

*Far.* As I did understand, it was so; it was so for my particular, but I cannot say it of others.

*Att. Gen.* Did not Mr. Love speak to you to that purpose, to bring it in that way?

*Far.* I cannot say he bid me lay it down.

*Lord President.* What was the manner of Mr. Love's requiring of you, or notifying of it to you, and the manner of your pursuit of that? [Here captain Far was at a stand, and made no answer.]

*Att. Gen.* I will make it very short: Whether this were not done, that there might be no discovery of it?

*Far.* It was done to that effect, that there should be no discovery of it: I did it under that notion.

VOL. V.

*Lord President.* And do you not think Mr. Love conceived it under that notion?

*Far.* I cannot say he did.

*Att. Gen.* Were you not spoken to by capt. Massey, to speak to col. Barton to lend money?

*Far.* I did speak to him.

*Lord President.* What was that?

*Far.* Ten pounds, as I conceived; for I received it from him in a paper.

*Att. Gen.* To whom did you deliver it?

*Far.* To capt. Massey.

*Att. Gen.* Massey's brother, my lord.

*Lord President.* You received it from col. Barton. Capt. Massey bid you speak to col. Barton for a sum of money; and he gave it to you; and you gave it to capt. Massey.

*Att. Gen.* Was the money, as you conceived, returned to Massey and Titus?

*Far.* I cannot say it was.

*Lord President.* Do you believe it was desired to be raised to that purpose? And do you think it was done according to that purpose?

*Far.* I do not know.

*Att. Gen.* Whether do you conceive that this money you thus brought to capt. Massey, was not for Massey and Titus?

*Far.* I do conceive it was.

*Att. Gen.* And was not Mr. Love commonly at your meetings? And whether, after Drake went away, the meetings were not at his house?

*Far.* I met with Mr. Love often at his own house.

*Att. Gen.* This money was taken up under the notion of a charitable use?

*Far.* I do conceive it was given them under that notion.

*Love.* Sir, he gave you a large account of the negotiation with Titus; pray ask him if I were privy to it.

*Far.* I cannot say so.

*Ld. President.* Do you believe it?

*Love.* You say the copy of the king's letter, you suppose, that was brought over by Alford, was read at my house; whether did I hear the letter read in my house?

*Far.* I cannot say you did.

*Ld. President.* Was not Mr. Love, when the letter was communicated, sometimes in the room going and coming?

*Far.* I cannot say when it was read; but I say he was there during some part of the communication; but I cannot say he was there at the reading of the letter.

*Att. Gen.* These are good questions, my lord.—*Love.* The court will judge of that.

*Ld. President.* But do you conceive that he understood the contents of it?

*Far.* I do conceive so.

*Love.* But he doth not say it was so. He said there was a narrative read from Titus, I desire your lordship to ask him, whether I was present whilst the narrative was read, yea or no.

*Far.* I cannot say any thing to that; I cannot swear he was there.

*Love.* Ask him whether I did not go often out of the room.

*Far.* I did observe, that when Mr. Love hath been there, he hath been often called away, and hath been absent; and therefore I cannot say such a thing was done when Mr. Love was there.

*Att. Gen.* He hath before proved it upon oath, that he was there some times.

*Love.* But look before, and he said he could not say I was present when it was read.

*Att. Gen.* This Narrative, whether was it a copy written by Alford, as news brought over, or the copy written by Titus himself?

*Far.* Alford said it was a Narrative from Titus.

*Love.* Pray, ask him whether I did send Alford over, yea, or no? or agreed to the sending of him over.

*Far.* I think he did not; but he was sent by William Drake.

*Love.* My lord, whether was he not privy to it? He told you Titus's letter was writ before Alford went.

*Far.* But it was not agreed upon.

*Att. Gen.* Titus's letter, that he writ, that some might come to him, to receive an account of him, was read at Master Love's house.

*Love.* I move this question, because Alford, who was the man sent, confessed that Wm. Drake sent him. He pretended there was a Commission read in my house; I desire to know when, or at what time; whether before the 29th of March, 1650?

*Far.* I am not able to speak to the time; it is about two year since, or something under.

*Love.* I desire, Sir, to ask him this question, Whether the rude draught, written by Wm. Drake, or the original copy, was sent away?

*Far.* There was only a rude draught that read; and then afterwards Drake was to draw it up.

*Love.* Ask him whether I gave my consent to the sending away of this Commission.

*Far.* I cannot say Mr. Love was there when it was sent away.

*Att. Gen.* Did Mr. Love make any protestation against it?

*Far.* It was agreed by all that the Commission could not be sent.

*Love.* Ask him whether I did not declare in the company, when there was such speech of commissioning, that it was an high act of presumption for private persons, to commission any, and a notorious falshood to say it was an act of the Presbyterians; and whether did not I declare myself against sending the Commission?

*Far.* I did say it was agreed upon by all, that we could not send the Commission.

*Love.* I can prove, if I may have the witnesses indemnified, that I declared against any Commission.

*Ld. President.* Mr. Love hath declared then he knew of the Commission.

*Love.* I acknowledge the disavowing of any Commission; I gave my reasons for it.

*Att. Gen.* My lord, I hope you will remember what the prisoner says.

*Love.* I do not own any thing about concurring with any Commission, but only disavowing of it. After Dunbar Fight, he saith, he came late; and he cannot tell whether the letter was read at my house; only he says I told him so; And whether was that the letter, or a copy of it?—*Far.* I cannot say that.

*Love.* The most that I have done, is but to receive news; and I hope I shall not die for that. Was this letter of Massey written to me?

*Far.* I have said already I cannot say so.

*Love.* I would be glad to be freed in court.

*Ld. President.* You are a very free man indeed.

*Love.* He speaks of a sum of 250*l.*, or 300*l.*, sent to Massey and Titus; pray ask him whether I did agree that it should be sent.

*Ld. President.* Did he disagree?

*Far.* I said it was agreed to; but by whom, I cannot say.

*Att. Gen.* Did Mr. Love at that time disagree?—*Far.* I cannot say he did.

*Love.* Did I move capt. Far, or say, capt. Far, will you contribute 5*l.* to Massey or Titus, or any money?

*Far.* You asked me the question, what I would do.

*Love.* But for Massey and Titus?

*Far.* I did conceive it was for Massey and Titus.

*Love.* He says he laid it in my house; and he so far justifies me, that he cannot say I received it; and God if my witness, I never did see it in my life. If another man agrees to receive money in my house, I hope the court will not judge me for it.

*Ld. President.* It is an easy matter for you to take it, and convert it to another use.

*Far.* I do conceive that captain Massey had the money.

*Love.* Now you clear me: Another man brings the money, and I do not order him to bring it; and another receives it, and not I.

[Captain Far withdraws.]

*Att. Gen.* Now, my lord, we shall conclude in a very short word, with a minister to a minister.

[Master Jackson the Minister is called into the court.]

*Jackson.* Sir, I dare not swear.

*Ld. Pres.* Dare you testify the truth when God calls you to it? For God will appear in no other vision than in the power of magistracy.

*Mr. Jackson.* I dare not speak against this man's life.

*Ld. Pres.* Dare you speak the truth before a magistrate?

*Jackson.* That that I say, is this: That I look upon this man as a man very precious in God's sight; and, my lord, I fear I should have an hell in my conscience unto my dying-day; if I should speak any thing that should be circumstantially prejudicial to his life: And in regard of these terrors of the Lord upon me, I dare not speak.

*Att. Gen.* I think all the Jesuits in all the colleges have not more desperate evasions or shifts from the purpose than these men have. My lord, you now see what a desperate combination here is, that men being before authority, and in the face of magistracy, in such a court as this is, so eminent in the presence of it, and so authorized as this is; that men should dare to do as they do; and that ministers should say they dare not speak the truth: Not when Treason is hatched and contrived, they dare not speak the truth; that this man should be more precious, though a traitor, than the commonwealth, which should be preserved. I hope we shall root these opinions out, or some of the parties that hold them; that I will say.

*Ld. Pres.* Master Jackson, you are one of the parties in these meetings, you have been at their meetings; and we require nothing of you but to speak the truth. St. Austin will tell you, That to conceal a truth, or tell a lie, you had better let the world fall about your ears. You are required nothing but to speak the truth; and will you say this truth will be a torment to your soul? Are you a professor of Jesus Christ, a minister of God? The great errand you are sent hither about, is to speak the truth from him. Therefore lay your hand upon your heart, and do as becomes you as a Christian, and as a rational man, and as one that will tell truth; for by the truth the world stands. We are all no better than savage men, if we have not judgment to tell truth one to another.

*Att. Gen.* My lord, suppose Mr. Love should kill one of these men (that do hear the debate) in the presence of Mr. Jackson, and he should be called to give evidence, and refuse it; he may take away any man's life. Personal respects should be set aside, when we come to judgment. You see, my lord, the person of this man, how it is preferred by this man. That which is the truth, you are required to speak, and nothing else.

*Ld. Pres.* Have you any oath or promise among your combiners to be secret in this business?

*Jackson.* Never in my life, my lord.

*Ld. Pres.* Will you take your oath?

*Jackson.* I dare not, my lord.

*Ld. Pres.* What is your reason?

*Jackson.* I have told you, my lord, and I will tell you it again; I am a man of a troubled spirit, and I dare not do any thing that should cause a hell in my conscience to my dying-day.

*Ld. Pres.* Do you look to die?

*Jackson.* Yes, my lord.

*Ld. Pres.* And do you expect to live again?

*Jackson.* I trust in Jesus Christ I shall live again.

*Att. Gen.* My lord, I desire your clerk may be commanded to give him his oath, and he required to take it.

[The Clerk tenders him the Oath.]

*Ld. Pres.* Will you take this Oath or not?

*Jackson.* No, my lord.

*Ld. Pres.* Then I think you are the men

that were spoken of before, Jesuits and priests: They say you are none, but you are their brethren.

*Att. Gen.* My lord, these go beyond Jesuits: The Jesuits will swear with a reservation, and these will not swear at all. This man must be proceeded accordingly with; for if this be allowed, I conceive there will be no justice in England. And in respect of the quality of his person, function, and gravity, by so much is it a more pernicious example, and it aggravates the thing every way.

*Ld. Pres.* Let it be known here, that it may be dispersed abroad; and I think here are some of most counties of England. And this air is gone forth; this very plot is secretly spread with some chief ministers throughout all England.

*Att. Gen.* This right they have done to many of them, that I believe it will make a more severe inquisition into these persons, than otherwise there would be: It is not blood that is looked after, but confession and contrition. I am glad that those that are not clergymen do come in, and the clergy will not confess at all.

[The Court consults a while.]

*Ld. Pres.* Master Jackson, for your refusing to swear, the Court fineth you 500*l.*, and Imprisonment during the pleasure of the Court.

[The Keeper of the Fleet is called upon, and commanded to take him in custody.]

*Mr. Love.* My lord, I have some motions humbly to make to this Court. The first is, to entreat your lordship, and the rest of the members of this Court, that if I have let fall any expressions through inconsiderateness, or for want of skill in the law, that have been an offence either to your lordship, or to any, I beseech you, if I have spoken any derogating expressions, or made any unseasonable motions, that you would impute it to my ignorance.

*Ld. Pres.* None of them shall hurt you.

*Love.* Then I entreat this favour, That I may have Counsel assigned me, and Solicitors here in Court, and in my chamber at the Tower, and a copy of my Charge, and convenient time, as the nature of the business requires, my Charge being long, and I have not read a word of it, nor the Depositions; that I may have, I say, Counsel assigned me, and convenient time to bring in my Answer. And I am confident, through the goodness of God upon me, I shall clear myself of all the Treasons charged upon me, and of their aggravations through strains of wit and quillots of law by instruments of state: I am confident I shall clear my innocence, that I shall not stand a Traitor before you.

*Ld. Pres.* They being instruments of state, are instruments of God appointed by the state. For your time, you have all this afternoon. Are you not ready?

*Love.* I was yesterday nine hours locked up in that close room, and in this place; and I could not read one word last night, not out

of trouble of mind, but through weariness, being kept so many hours in the Court.

*Att. Gen.* My lord, he hath had a fortnight's notice of his Trial to prepare for it. My lord, we have been two days; and by the course of proceedings, if the gentleman had had his Trial by a Jury, both must have been dispatched in one day. We are appointed to go on to hear his defence now, or else on Monday.

*Love.* I desire a convenient time to bring in my Witnesses, to make it appear how the Witnesses against me contradict themselves. I have not yet read the Depositions of one man, and I cannot read the Depositions by Monday; and to-morrow is a day that some time of it should be spent in other employments.

*Ld. Pres.* To do justice, you must run out of the church; and though you were at your prayers, you must forsake praying and sabbaths to do justice. Sir, this is of a higher nature than all your preaching and praying.

[The Court consults a-while together.]

*Ld. Pres.* The Court all agree to give you till Wednesday, 8 o'clock in the morning.

*Love.* I desire that I may have Counsel here, and in my chamber.

*Ld. Pres.* You have shewed nothing these two days that raises any doubt in matter of law.

*Love.* There are some things in my Charge, that I doubt this Court cannot take cognizance of; something in those acts, and something in respect of the time. It is matter of law, whether the act speaketh of sending or receiving letters or messages. And here are eight witnesses come in, and never a man proves that I received letter, or sent letter, or lent any money. And this I conceive is matter of law, whether the acts reach being present only where other men lay down money.

*Ld. Pres.* You have had counsel.

*Love.* My lord, I have had none.

*Att. Gen.* For counsel, you are to send him none, my lord: He hath his liberty; he hath recourse for all the people of England to come to him.

*Love.* Counsel have refused to come to me; I have their letters about me.

[Here he reads the Letters of some counsellors, which they sent to him to the Tower, declaring they could not come to him, unless they were assigned by the Court.]

*Att. Gen.* All that we can say to you is, that Counsel may come to you, if they will.

[Master Love is commanded away; and the Court adjourns till Wednesday.]

*The Third Day's Proceedings, July the 25th, 1651.*

The Court is set; and Mr. Love is commanded to the bar.

*Att. Gen.* Mr. Love, this is the day the Court hath given you, according to your desire, to make your Defence; and they are ready to hear it.

*Ld. President.* And I hope those directions that have been given, have been observed, that any persons of what quality soever, either lawyers or others, that came to you, have had in a fair way access unto you; and that you have been debarr'd nothing that the Court gave order for. If there have been any impediments, we will do our best to have them taken away.

*Att. Gen.* My lord, I have nothing more at present against him: You have heard that whereof he stands accused, and the Evidence produced to prove it. And, my lord, I hope they be sufficient to convince the gentleman that there is proof against him for these facts and treasonable designs whereof he stands accused. This day is appointed for his Defence, if he thinks fit to make it. But if God hath otherwise wrought upon his heart, and that he himself is convinced that the Charge against him is proved to be true; to me it will be the best way of his preservation. But what way soever he thinks fit to take, I shall be ready to go along with him in it. And so, my lord, I expect what he shall say.

*Mr. Love's Defence.*

*Love.* My lord, I shall not trouble your lordship and the Court, to bring in at present any Witnesses to testify any thing that might invalidate that testimony that some have brought in against me; I love not to protract time: but I should betray my own innocency, should I by my silence be under all that charge and obloquy which is cast upon me. And therefore I deem it my duty, wherein I can, and as far as I am able, to express myself before your lordship and the Court. And therefore I humbly crave leave of your lordship, and this Court, that I may make my Defence for my life before you.

Although I am denied Counsel to plead for me in this Court, which is so just and necessary a means for the preservation of my life, yet my comfort is that of the Psalmist, 'My Defence is of God, which saveth the upright in heart,' and pleadeth the cause of his servant against him that putteth at him.'

My lord, you have granted me that favour which the Romans did to Paul, that he might answer for himself, concerning the crimes laid against him. In making my Defence, I shall humbly crave leave to proceed in this method: To speak something, First, concerning the Charge; Secondly, concerning the Witnesses, and their Testimony; Thirdly, something concerning myself: And then, lastly, some things humbly to propose to your lordship and the Court concerning my Charge. Mr. Attorney-General hath exhibited a Charge against me, consisting of two parts; of High-Treason, and of other High Crimes and Offences. As touching the first, comparing the acts which the state hath made with the actions which myself have done, I know not any personal act of mine (proved against me) that renders me guilty, as to treason, by any public act of your lordships.

And therefore I pleaded the general issue, Not Guilty, as to that.

As to the second, my Counsel having a general licence to come to me, and since having been with me, they have acquainted me, that presence with, or silence at what my accusers had done, this renders me culpable by your acts; and therefore as to that I shall humbly commit myself to your justice and mercy.

Concerning, Sir, the Charge laid against me, I can safely and truly say, I am charged with many things which I ought not, being pretended to be done before the act was published which constitutes this Court. I am charged likewise therein with many things that I knew not, and with other things that I did not; and therefore dare not in conscience lie under the obloquy of the whole charge. I do therefore in general declare and protest against what is mentioned in the Charge, touching the raising of insurrections, seditions, and rebellions. I may say in that regard as Jeremy did: I desire not that woful day, God he knows.

To the other particulars, to wit, the Confederation with Jermin, Piercy, and others, in foreign parts, to raise forces, I answer, I dislike the very mention of their names, or any concurrence with them in any practice of such a nature, who are persons whose principles are so contrariant to religion and liberty.

As touching the other Particulars, to wit, a correspondence with the son of the late king, the queen, Jermin, and Piercy, and others mentioned in the charge; I do declare before you, that I never received letter from, nor sent letter to any of them; nor had I any correspondence with them.

There are other things in the Charge, to which all the Depositions of the Witnesses do, not in the least come up: and should I by my silence render myself obnoxious to the whole, you might judge me to be guilty of that which indeed I am not guilty of.

I observe in reading the Charge, that there are many things in it which the witnesses do not in the least speak unto: For, first, none of them swear that ever I writ Letter to the king, or to the queen his mother, or to Jermin, Piercy, or any other person named in the charge, or to any person of the Scottish nation, since the troubles began.

Again, none of the Witnesses swear that ever I either desired, or persuaded, or directed, any person to write any letter to any persons whose names are mentioned in the Charge, or to any person in or of the Scottish nation: Nor do any of them swear that ever any letter was written in my house; but that only letters supposed to be come from or sent to the Scots were read there; which I do not deny. Again, none of them swear that ever I did so much as read a letter in my house, or other where, that was pretended to come from the Scots, or pretended to be sent into Scotland. Further, none swear that ever I gave my express and particular assent to the sending away of any letter. And none swear that

ever I collected one penny of money either for the king, or the Scots, or any person in Scotland. That which is affirmed by one testimony, to wit, by Alford, that I moved for money, I shall answer when I come to it. Again, none of the Witnesses prove that ever I invited any person, or foreign forces, to invade the nations of England and Ireland; which yet is laid expressly to my charge, in the Charge read against me. None likewise prove that ever I plotted, contrived, or endeavoured to raise Forces, Tumults, or Insurrections within this nation, against the present Government. None swear that I was a correspondent. Indeed Adams in his testimony had these words (which both the notary and myself took.) That he took me to be a correspondent. But when I had your lordship's and the Court's leave to put this question to him, Whether upon oath he would affirm I was one? His answer was, That he could not positively say I was so; but he said, He did conceive I was a correspondent; but did not say I was so. So that, Sir, as to these particulars, there are none of the eight Witnesses, neither the seven that have been sworn, nor yet master Jaquel, whom I do not take to be under an oath, that do charge any of these particulars upon me.

I have a word also to speak concerning the Witnesses who are my accusers; and I might say there is an Incompetency in them, as to their number. There are many particulars sworn against me, to which but one witness hath sworn to one fact: and this I shall humbly offer to your lordship's and the Court's consideration. I might alledge also an incompetency as to their quality: they are not only persons accused of treason, and so are not to be believed, but they have made an open confession of that which is treason by your act, and so are not *legales testes*. They have done that by an open confession, which, as I am informed, is equivalent to a conviction: they have confessed sending of letters, receiving of letters, and lending of money; but they have proved none of these against me. Now they having both given it under their hands, and also publicly declared that they have done these things, I cannot judge them competent witnesses against me; but thus I must leave to the Court's consideration.

Sir, concerning the Incompetency of their number, to that wherein two witnesses do concur, I am concluded; and wherein they have testified any thing true, I would not deny it for all the world; and wherein they agree in their testimony in a truth, therein I will be candid, and ingenuous to acknowledge it.

My lord, though the Charge be long, and my time but short, and the Depositions many sheets of paper (and truly I could hardly read them over till late last night); and yet through the good hand of God upon me, I shall labour to make as plain and clear a defence as God shall enable me.

Sir, in reading over the Charge, I observe, that those things which seem most criminal

against me, are sworn to, but by single testimony; and I will mention, with your lordship's leave, a few particulars.

First, Touching the letter said to be from Titus, the effect of it being, as was said, to desire some to come over to Calais, that he might give them information touching affairs at Jersey; none but Far swears that this letter was read in my house. The other witnesses, some say, it was read in one place, and some in another: Alford, I remember, he says he heard it from William Drake: and Adams says, it was read in William Drake's house: but none but Far swears it was read in my house. There is likewise none but Far swears, that major Alford was desired in my house to go to Calais to Titus; neither Jaquel, nor Potter, nor Alford, nor Adams, nor any of the rest lay this to my charge: it is only Far that lays this to my charge; and he doth it most untruly, which I will make out unto you by an undeniable demonstration.

He says, that at a meeting at my house, the company did desire major Alford to go to Calais. Now if your lordship observes Alford's testimony, he tells you upon oath, that he was never in my house till after he came from Calais; nor ever spake with me in my life till after he came from Calais; therefore could not be desired in my house to go to Calais. So that, Sir, I will not lay it upon the badness of Far's conscience, but upon the badness of his memory. I do not think he is such an atheist, to swear falsely deliberately; but being asked so many questions as he was, for he was asked four-score and eighteen questions by Mr. Attorney, and some of the court, he might easily say he knew not what.

And I saw the man was confounded, and it was hinted to him what to say, by the help of the papers, and examinations taken from him in private, and shewed to him in public: So that, Sir, I saw the man under a temptation. I was loth to mention this then, though I knew his testimony herein to be false, because I would not anticipate my last answer.

A third particular charged upon me by one witness only, is a copy of a letter (not the original, none swears that) that Alford received from Titus; and he told him, it was a copy of a letter from the king. Now Far he swears, that the substance of the letter was to desire commissioners to be sent over to Breda, at the treaty there. Now Alford, who pretended to receive this letter from Titus, being asked the question, he swears that there was no such thing in the letter that he knew of. Now truly, if any did know the contents of that copy of a letter, it must be Alford, who brought it over: I beseech your lordship therefore to consider it, and though the charge against me be very high, and my condition very low, and the opposition against me very great; yet I hope I am in the hands of merciful and just men, and that wherein you see but single testimonies, that therein you would be very tender in proceeding to a sentence against me upon those testimonies.

Again, in the next place, I observe a single testimony only in another business, and that is major Alford. None but he, of all the witnesses, did swear that it was agreed upon among us, that is, at my house, that a Commission and Instructions should be sent over to the lord Willoughby of Parham, Massey, Titus, and alderman Bunce; none, I say, but Alford swore this. Adams indeed swore, that there was a motion, that this should be; and Huntington swore this, that Mr. Love should say, Come, come, let it go; (to which I shall answer when I come to it). But Far said expressly, three times in court, being upon oath also, that all the company were against sending away the Commission. And Alford he only swears, that the Commission was agreed upon.

I hope your lordship and the Court will judge which of these to believe; and for Alford's affirming that it was agreed upon among us, I am sure, if he had any conscience, he could not say that I agreed to it. I will not deny (now witnesses have proved it) but that I was present. But I did express myself against the Commission and Instructions, as being an act of high presumption, for private persons to send Commissions and Instructions; and as being an act of notorious falsehood, that it should run in the name of the Presbyterian party, when none did know any thing of it, that I know of, but only those that were then in the room. And I beseech your lordship and the Court to consider, that this is not only a single testimony, but that it is said to be done in 1649, a great while ago, my lord. And so the business of Titus, if it had been true, was done some time before that: so that, Sir, it being done before the act of the 26th of March, 1650, which constitutes this Court, herein I hope it will not be deemed criminal, if I had agreed to and approved of the Commission, which I never did. Another particular, to which I observe there is but a single testimony, which is Alford also; he swore, That at a meeting at my house, I moved for contribution of money to Titus; none swore this but only he. Adams swore, I took pen and ink in my hand, but he knows not what I writ. Others swore, That I was sometimes present at the meeting; but none but Alford swore, that I moved at a meeting for contribution of money. Now, Sir, as to that, it is but a single testimony; and if it were true, I do not deem it comes under the act, because the act (of which I was ignorant till the day I heard it here in Court) of the 2nd of August 1650, that act doth adjudge this to be treason, to wit, The sending, or causing to be sent, money, horses, or arms into Scotland. Now, Sir, if it had been true, which this witness deposes, That I at a meeting did move for money, yet he proves not against me, that ever I received or sent away a penny; and if I had moved it, that had neither been sending away of money into Scotland, nor a causing of money to be sent away; and so brings me not, as to treason, under your act.

Another thing, unto which only a particular



Witness swore, to wit, Far, is, That I moved him particularly to contribute money. He chargeth not this at a meeting, as Alford doth; for he says, he came in late, but saith, that it was a personal motion to him alone: And he doth not say, that I moved him for money for Massey and Titus, but that I only asked him this question, Captain Far, What will you do? And if your lordship consider it, and that your notaries have taken right, you shall find that to be his answer, which I shall answer when I come to it. And thereupon he confesses he brought 5*l.* to my house, but he doth not tell you that I received it; and God is my witness, I never saw it, nor received it, nor did I give any directions about it. But as Far was going out of the Court, he named capt. Massey, the person which he thought received the money; for which he was rebuked by some that were by him, that so the greater odium might lie upon me: as if because the money being brought to my house, I must needs therefore receive it. His name, as I am informed, that rebuked him for declaring who received it, is capt. Bishop: so that they would insinuate into your breasts, who are my judges (who I hope will be conscientious), That it was I that received the money, when the witness meant honestly, that another received it. But if I had received it, or moved for it, yet he is but a single testimony to that particular. Again, in reading the depositions, I take notice that there is only a single testimony to those words (upon the reading, reading, I cannot say, for I never read it; upon the hearing some papers read, supposed to be a Commission) that Huntington swore, that I should say, 'Come, come, let it go.' Those were his words; but the other who were there present, two or three of them being asked, whether they heard me speak such words, they all of them denied that they heard any such words. Now truly this Huntington is a man whose face I never saw before that day, nor since, till I saw him here in Court: and if I had known that a business of any dangerous nature had been come to my house, which I did not (for I knew no more of it, than any here present, before Drake took the papers out of his pocket, which Huntington confesses were written in characters, and read by Drake) I should have been accounted a very indiscreet man, to speak any such words in the presence of a man whose face I never saw before. And for those words that I should say, 'Come, come, let it go;' I hope your lordship and the Court will be satisfied, that I never spake any such words, as to the Commission and Instructions: for then I should have contradicted myself in one breath: for at the same time I had spoke against it.

Again, I observe in the Depositions, none but Adams affirms that there was a letter; 'which,' says he, 'was declared to be directed to the General Assembly of Scotland.' He doth not swear it was directed to the General Assembly, but that it was declared to be so, and so swears by hearsay. None but he, I say,

affirms upon oath, That at my house there was a letter read, which was declared to be directed to the General Assembly. And he says further, He thought this letter was penned by Master Love or Dr. Drake: But I beseech your lordship and the Court to consider by what reason he did conceive this; and I hope your lordship will distinguish between a positive assertion, and a conjectural supposition. For being asked, why he conceived so? 'I conceive so,' says he, 'because of the language of it:' as if he that never saw any letter of mine, to know that poor and low style I write in, should conceive that either I, or that other gentleman named, should pen that letter, merely because of the language of it, it being (he said) in order to promote the ends of the Covenant. I hope the Court will judge of the insufficiency of this evidence; and were it never so clear, yet as to that particular, it is but one testimony.

Again, none but Adams swears concerning a large letter, that, for my part, I never knew of, till the day he affirmed it here in Court. A large letter, he says, in the nature of a declaration, penned, as he thought, by Master Love or Dr. Drake, wherein it should be said, That they could not send money till the Scots did appear more considerable, and grew nearer to action: yet he confesses he had no ground to say Master Love penned it. And indeed he had not. But, Sir, as for this letter, though I durst not for a world deny any thing which I know to be true; yet God is my record, to my knowledge, I never so much as heard any mention of it. And as for these words he speaks of to be in the letter, I know nothing at all of them; nor did I ever hear them, as I know of, till I heard him affirm them here in Court.

But if it had been so, yet he is but a single testimony; and I beseech your lordship to consider, that he says it was to this effect, or this was the substance of it: now I hope so many grave judges and lawyers that sit upon my life, and so many conscientious men, will be tender of a man's blood, when a man shall come in with evidence, and shall shew neither my hand, nor the letter, nor the original, neither copy, nor transcript, nor any thing but the vain ravings of a man's memory in things spoken or done so long ago; and that a man shall come in against a man's life, and shall only say, that this was the sum or substance of it, or it was to this effect. And I being a divine, I shall not speak as to matter of law, that this is insufficient testimony; but as a scholar, and one that studies the Scriptures, I shall observe one memorable instance that pleads my justification in this particular, and they are the words of Christ; Christ said, 'Destroy ye this Temple, and in three days I will raise it up,' John ii. 19. Now the Scripture in Mark says, 'There arose certain, and bare false witness against Christ, saying, We heard him say, I will destroy this Temple, &c.' Mark xiv. 57, 58.

I beseech your lordship to consider, that in this testimony of the false witnesses against

Christ, there is only the variation of a word, and the addition of a letter; there is the addition of a letter *I*, and the alteration of the word *ye* for *will* (there is all); for Christ did not say, 'I will destroy,' but, 'destroy ye;' and yet the Scripture takes notice of it, that this addition of a letter and alteration of a word brought his accusers under a false testimony, though they spake according to their intention; for they did verily believe he spake of the temple: for they said, forty years was it in building. So that I beseech you be tender in matters of blood. I know you who are skillful in the law do know, that the proof of treason must be as clear as the Sun, 'Probationes oportentes esse luce clariores.' Now when a man shall come against a man's life, and cannot shew any letter that ever he wrote, or that ever he did receive, but shall only swear 'it was to this effect,' or 'to this purpose,' or 'I believe this was the substance of it;' I hope you are so wise and conscientious, that you will pass no judgment upon this conjectural evidence.

Another particular, to which only one Witness testifies, and that is Adams; he swears that I should say, That if the Presbyterians were in arms, by the blessing of God, Malignants might be prevented from getting the day. Truly, I do not know what crime is in these words, but as they may be wrested. But, Sir, I do remember that this Adams hath often come to my house; he said seven or eight times, he might have said seven-and twenty times; for he hath come sometimes once or twice a week to my house, to tempt me (as I now perceive) and hath offered me money; and would ask me whether I knew any thing for a public use that might require money: and though I never suspected him, yet so free am I from maintaining correspondency, or from having intelligence, or contributing of money to maintain a war, that I never received one penny of him in my life, though I have been moved to it by him: but I remember, of late especially, about a quarter of a year before I was in prison, he would come once or twice a week to my house, and he pretended that he was wrought upon by me, and that I had turned him from his malignant principles; for he was very violent for Hamilton's invasion of England, which I was, and to this day am against; and I did labour to possess him what a mischievous design that was: and so he pretended to be turned to my principles, and upon this got some room in my affections. But these words were not above a fortnight before I was committed to prison; and I remember the occasion of them was this: I was bewailing the great alienation and difference that there was between the Presbyterian and Independent party (though I do not love names of distinction); and indeed thus I said, that if the Godly party, that were now disunited and disjoined, both of the dissenting and Presbyterian way, were in arms, there were no hopes that ever the Malignants should get the day. And God

is my record, I spake nothing to him but to this purpose. And thus, through the good hand of God upon me, I have spoken to what I observe in reading the depositions, wherein I find but single testimonies against me,

I shall now crave leave (which is the main of my work) to run over the depositions as briefly as I can; for I shall not trouble you with large speeches: but being the depositions were large, and the witnesses many, your lordship and the court (I hope) will bear with me with the more patience, if I speak more largely in it. It is my duty to speak for myself, and it is for my life.

The first Witness that appeared in court against me, was Henry Potter. As to his testimony, there are many particulars which he was asked about me, to which he spake but conjecturally; 'as he thought,' and 'as he believed,' and 'as he conceived.' And when papers by Mr. Attorney-General of his examination were tendered to him, he answered, That 'then he had a latitude to speak more than he durst affirm upon oath.' And upon this I shall humbly crave leave that I may make this motion to you, that you would not, in passing judgment upon me, hearken to any private examinations, which are extrajudicial, to be brought in court against me; for most of the witnesses had their private examinations shewed them in court, and were read to them, and they did not speak in their relations of what they knew, but what they conceived; and when they could not tell what to say, then their examinations were produced to direct them: and I hope your lordship and the court will take notice of this. And herein I cannot but acknowledge the justice of this court in this particular, that you would not receive private examinations till they came face to face, that I might answer to the crimes laid against me.

But as to his testimony, I shall not run over things that touch me not, I must not flatter myself to pass over things that concern me: for I know it will be looked upon with more prying eyes than mine are. There are only two things in his testimony that concern me: he speaks not of any meetings at my house that he knows of; he speaks not of any money that ever I lent him or gave him, though there was a narrow and exact examination of him in those particulars. But two things concern me in his deposition; the one is, that he received a letter with a great *L* upon it, from one colonel Bamfield, which was a narrative of the affairs of Scotland; which letter, with two more enclosed, from my lord of Argyle, Lowdown, and Lothian, he said, he brought them to Mr. Love's: and herein I might take notice, that he forgot himself a little, for he might have said, that he brought them first to Mr. Jaquel's; for Jaquel did affirm in court, that Potter brought the letters to him, and spake to him to come to me. The substance of the letters from the earl of Argyle and the rest, he says, were to move for 10,000*l.*; and (as I remember) Jaquel says, for 5,000*l.*; but Potter himself acquits me in this

matter for he doth not swear the letter was to me, nor could he swear it justly; nay, he swears he did not think it was to me. And as for this Bamfield, he is a man whose face I never saw to this day: and he swears, (and indeed he had been injurious if he had not told, you thus) that when he came into Mr. Love's house, he said, 'Mr. Love, I have news to shew you.'<sup>2</sup> And unless things be aggravated against me, by the insinuations of men, and by rigid inferences and collections, this will be the worst charged upon me, that there were several meetings at my house, and several letters read there, which I do not deny. But, Sir, he confesses that he said, 'Mr. Love, I have news to shew you;' and that he opened some of the letters, and that some were not opened when he brought them: but neither he nor Jaquel swears, that I opened them; and he tells you, that he carried away the letters with him. And he swears further, that both myself, and all that were there present, did manifest an utter dislike and detestation of those letters. But herein I know what will be laid to my charge; it will be said, why did not Mr. Love reveal them? Truly, in this I do ingenuously say, that I did receive by reading of the act that constitutes this court, that those only were bound to reveal, that did receive them; and not that I was bound to reveal that which another man received. But herein I am better informed by my counsel, and they tell me, That presence with, or silence at what others do, makes it a criminal fact in me, if the matter of the letter be criminal and treasonable by your acts; and therefore in this, that I did not discover them, I shall humbly beg your favour.

The next thing in Potter's testimony that toucheth me, is, he swears that he heard of a proposition for raising of 400*l*. for Titus and Massey; but he varies from the others: Alford said, 2 or 300*l*. and Far said 250 or 300*l*. and Potter saith, 400*l*. But he saith he was not present, when the proposition was made, and therefore he cannot speak as to that. But yet saith he 'I brought 10*l*. to Mr. Love's house, and there left it' (five or six persons more being in the room). Mr. Attorney-General was pleased to ask him, whether he did not give me a twitch by the hand or cloke, when he brought it? Potter, I remember, denies that he did so; and I do not remember that ever he did it, nor do I remember that ever he laid a penny of money down in my house: and I tell it you in the presence of God, I never saw it, nor received it to this very day. But, Sir, if he had given me a twitch, which is intended as an aggravation against me, I hope a Judicatory will not proceed upon so silent a thing as that is: though Solomon says, 'There is a teaching with the fingers,' Prov. vi. 13, yet that is so silent a thing, that a court of judicatory cannot take

notice of it, unless it be manifest and apparent by some act. And therefore seeing he doth not affirm that I saw the money laid down, or that I received the money, or directed or ordered him to come to my house with any money, I hope you will not lay that to my charge. And thus I have done as to that particular.

There is only one thing more in order to the letters he was examined about. He was asked what answer was returned to those letters that he received from Bamfield, and the earl of Argyle and the rest, that he shewed Mr. Love?

To that, he gave this account, That a letter was left at his shop, which he thought, he said, came from Mr. Love, or Doctor Drake. Now, Sir, for my part, I declare in the presence of God, that I never in all my life, either wrote or sent, or left a letter at his shop: and although I am not to plead another man's cause, yet I believe that godly minister he mentions will clear himself also; but I must only speak to my own defence. For my part, I never in my life sent a letter to his shop, written to those persons: and he only swears, that he thought the letter left in his shop came from me or Doctor Drake: But how could he know from whom it came, or what was the matter of it? and if it had come from either of us, which he did not affirm, yet he doth not say he opened the letter, and so could not tell the contents of it, that it was an answer to the supposed letter he shewed me. I have only one thing to observe in his whole testimony, and that is, that he confesses, until he had a sight of other men's examinations in private, to wit, of Alford's and Adams's, the things did not come to his remembrance, or words to that effect he hath in his depositions; and that there were some things to which he could not speak exactly, till he first saw some informations, and that Mr. Attorney General did shew him some informations, and that did bring things to his remembrance; and that before capt. Fisher and Mr. Attorney did prompt him, and remember him, he had forgot. So that, Sir, I beseech you consider, whether this be a clear and good testimony in law, that when a man hath forgot a thing done so long ago, he shall through the examinations of others have his memory rubbed up, and then shall come here in a public court to testify this against a man's life.

The next Witness is major Alford. He gives you a large relation about sending Titus to Jersey, and of 100*l*. given him for his journey, and of letters to the queen, and Jermin and Piercy. My lord, I am as ignorant of all these things as the child unborn, and did never know that Titus was gone or sent to Jersey, by any person, till a long time after I heard he was there, and till I heard of his name in the Diurnals, that he was an agent for some presbyterians; till then, God is my record, I knew nothing of that. And I need not speak to this; but because this was part of my Charge, and brought into the court, many may imagine, as if I were guilty upon the whole matter. But

L.

\* "This Passage of C. Potter's was through some mistake left out of his Depositions."

Orig. Edit.

vol. v.

that which concerns me is this: He affirms, that the Commission and Instructions were agreed upon at my house, to send to some persons, to wit, my lord Willoughby of Parham, Massey, Titus, and alldeman Bunce, to treat at Breda; and this is to be in the behalf of the Presbyterian party.

Now, Sir, I shall humbly crave leave to offer, wherein this testimony is not only disagreeing with the testimony of others of the witnesses, but even to his own testimony also. For here he says, it was agreed upon at master Love's house; and in three leaves after, he says, It is true, there was a Commission and Instructions read at Mr. Love's house; but, whether they were agreed upon there or no, saith he, I know not. I do not say he hath a bad conscience, but sure I am he hath a bad memory. He disagrees with the witnesses also; for Far did expressly affirm upon oath, That all the company was against sending them away; and therefore, for Alford to say, it was agreed upon among us, in that, I am sure, he doth not speak truly. Another thing, which Alford lays to my charge, is about a letter, which, after Dunbar fight, should come from Massey, wherein he should write for money and for arms, by the way of Holland; and he swears this letter was read in my house, and says, That upon the reading of it, I did move for the contribution of money to be raised for the supply of Titus. Now, before I answer to that, though I am not in a condition to retort, yet I shall humbly crave leave, without offence to Mr. Attorney-General, to intreat the court to take notice of this one thing: Master Attorney-General, when the witness had spake these words, did pry your lordship and the court to observe, that Massey wrote for arms, and that Mr. Love moved for money; as if he would insinuate to the court, That he writing for arms, and I moving for money, that my moving for money was to buy arms. Now Alford, upon oath, did declare, That every man there was against arms, and he only said, That the motion for money was to supply the personal necessities of Massey and Titus, who were in want. So that I intreat you to consider it, that the insinuation of Mr. Attorney-General might not be aggravated against me, and that a bad inference might not be drawn from it; as if he writing for arms, and I moving for money, that that money should be to buy arms; which is contrary to major Alford's oath. Again, another insinuation of Mr. Attorney-General is this: He prayed your lordship and the court to consider, That I moved for 300*l*. Now this is contrary to Alford's oath; for Alford hath these words: 'Mr. Love did move for the contribution of money, but there was no sum spoken of.' Now, when he shall affirm that there was only a motion for money, but no sum spoken of, shall this be laid to my charge, as if I moved for 300*l*? Therefore I intreat you, that those insinuations and aggravations of Mr. Attorney-General may not be laid upon me; and that ye would take no notice of any private exa-

minations, nor yet of any aggravations of those who are instruments of state, but upon the plain deposition of the witnesses; and according to their testimony and your consciences I must stand or fall. Alford said further, That after he came from Titus, he gave an account of a Narrative, and of a copy of a Letter from the king of Scots. What he might bring, I know not; and if he did, I never desired him either to go to Calais, or to come to my house; for I never spake with him, as I remember, till after he came from Calais; nor till the time, he says, the Letter and Narrative was read in my house. Now, Sir, he only says it was a copy of a letter, not the original. 'That Titus,' saith he, 'did shew me a copy of a letter' 'at leastwise, which he said was from the king 'to the presbyterian party.' So that this, which is the foundation of the rest of the testimony, is only this, That the copy of the letter was read at my house, and that it was a copy of the king's letter. This he affirms only upon hear-say; for he says, Titus told him so. But who can swear, either that Titus had the original letter, or that this was a true copy? Nay, might it not be a fictitious thing, either of Titus or of this man, as may well be suspected? So that they that receive letters, if that be treason, and those that write letters, and send money, if they be traitors; yet they have proved none of these against me, and yet I only am arraigned, and they in hope of favour.

Again, I desire the Court to take notice, though capt. Far says there was this clause, in the copy of the letter from the king, 'to send commissioners to Breda,' (and yet he overthrew his oath afterwards: for he says, It is so long ago, that I cannot remember it: but I shall speak to that when I come to it) yet Alford, that brought this letter, affirms, That he did not know it was to desire commissioners to be sent; and if it had been so, I should never have done it, and never did it. At that time I was in my study, I do not deny it; but when Drake read the Commission, I did declare my dislike of it, and detestation against it; and so did (as Far affirmed) either most or all the company; and if any such thing were sent, God is my record, I did neither know of the writing of it (other than in characters) nor of the contriving of it, nor yet of the sending of it away, till I heard Alford confess in the court, that he carried this Commission to Gravesend to one Mason, a man whose name I never heard of before I was in trouble. And if I had written and consented to it, yet it was in the year 1649, as major Huntington swore, and therefore was before the time that your act could take hold of me, if I had concurred to it, which I never did. Again, he insisted upon it, That I moved for a contribution. Now herein I beseech your lordship, that I may offer these two things:

First, This is but the single testimony of one man, and by the law of God, and of the land, a man must not die, but under the testimony of two or three witnesses. In the Old Testa-

ment, Deut. ix. and xv. 'One witness shall not rise up against a man for any iniquity, or for any sin in any sin that he sinneth. At the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established.' And lest this might be thought to be a judicial law pertaining only to the Jewish state, it is therefore quoted four times in the New Testament: by Christ, in Matth. xviii. by Paul, in 2 Cor. xiii. and in two other places, as noting it to be a law of moral equity, That no man's life should be taken away but by express and clear testimony of two sufficient witnesses. Now, in this that may seem most to pinch upon me, that I should move for money, there is but one witness; and it is, as I am informed, contrary to the laws of the land, and the statute of 1 Edw. 6, which provideth, That no man shall be indicted, arraigned, and convicted for treason, but by two lawful and sufficient witnesses; and therefore I beseech your lordship and the court, that you would be tender in those things, wherein you find but one witness speaking.

The other thing that I should say to this point, about moving for money, is, That I humbly conceive the act doth forbid relieving persons in arms; but now no person can be relieved by a bare motion: it is not the motion, but the having the money moved for, before the person in arms can be said to be relieved; and if it were true, yet, it is not proved, That those persons were then in arms. The other act, of the 2d of August, I conceive, gives me relief, if I had moved for money; for it judges those only to be guilty of treason, that shall either send, or cause to be sent, money, horse, arms, and ammunition, into Scotland. Now, Sir, if I had in a meeting moved for money, yet he tells you not how much I moved for; for aught he knows, it might be but for six-pence, for he cannot swear to it: and I hope, when the sum is not spoken of, you will be very tender. Yet this comes not under your act, either to be a sending of money into Scotland, or a causing of it to be sent, which is not the least fastened upon me. When I asked him (though he swore I moved for money) whether I contributed any money myself? to that he answered, he could not say I did; nor could any of the eight witnesses that came against me. And thus I have done as to his testimony.

The third Witness is major Huntington; and he affirms, That in the year 1649, one asked him to go to my house, and told him there were some there at prayer, and that he might there hear some news; and that he spake upon hear-say: But then he spake upon oath, 'And when I came there, Prayer was done.' Now for a man to be so positive in the first entrance of his testimony, as to say prayer was done, when he could not know that there was any prayer there at all: (for when he came, it seems there was no prayer; and how then could he know there was any prayer there at that time?) This at the very first entrance of his evidence, I suppose, might be a just ground

to suspect his whole testimony. But as for the man, I knew him not, I never saw him, as I said, before that time, nor since, till I saw him here in court. This man affirms, That William Drake read in characters, that which he called a Commission, and said, That he had a command from the king to send this Commission away; which, God is my record, I never heard, nor ever knew of it: and Alford that brought over the letter, in which Far swore those words were, he himself denies it. But that which concerns me in Huntington's testimony, is this: He affirms, That when the Commission was read by Drake, I should say, 'Come, come, let it go.' Now, Sir, I asked him this question, Let it go, what doth that refer to? Says Huntington, let the papers go. Now truly I am not so bad a grammarian as to speak of papers, 'let it go,' and not to say, 'let them go.' And if I had spoke of papers, as he says I did, I must either be guilty of nonsense, or else be of falsehood; I believe he of both. But as for those words, Come, come, let it go; he doth not affirm that I said, Come, let it go away, but let it go; and that may be a word of dislike: And if I did say so, yet it was not of the Commission, God is my record; for he came not till nine of the clock at night, as himself says: And before he came, I had declared myself against sending away the Commission and Instructions, as being an act of too high a nature for private men, and of notorious falsehood, to say it was in the name of the Presbyterian party, when it was not. And the other men that were here in court upon oath, and that were then present, as Adams and Alford, did confess upon examination, That they heard no such words from me.

The next testimony is master Adams; and he relates a story of a correspondence between William Drake and one Mason; and being asked, Was master Love privy to this correspondence? he did so far clear me, that he could not say it, nor was I privy to it. Being asked again; Was master Love privy to these letters of sending moderate propositions to the king? That he likewise clears me in, he cannot say it: And I can say, that I am so far from moderation in their sense, that moderation in their sense I deem downright malignity; which I was and still am utterly against. He was asked likewise, Did master Love know of collecting a hundred pounds for Titus? To that he answered, That he durst not upon oath say that Mr. Love was privy to this collection; and he doth not say, that it was agreed in my house to send away the Commission, but says, it was moved in my house: For he says, 'I cannot say it was agreed upon, for there was no Vote passed.' These were his words; and he contradicts Alford and Far in three places of his testimony. He overthrows Alford's deposition. He affirms that the copy of the letter from the king was to show what great affection he bare to the ministry of England; and promised great favour when he was in a condition to do it, and desired them to stand steadfast in

the way they were in. And he saith he dare not swear that this letter was read in my house; but he thinks it was. Now, as to this letter likewise, I desire the same favour from you, that when the letter doth not appear, neither the original, nor the individual copy, that you would be tender of passing any judgment upon me upon the vain ravings of a man's memory; and of a man's memory too, that is engaged to prosecute my life to save his own, as most of the witnesses are that came in against me. He saith there was a motion made in my house, that a Commission and Instructions should be drawn up, to send to my lord Willoughby of Parham, and the rest in Holland; but he says, 'But by whom I cannot say;' and says he, 'There was no Debate, as I remember, to 'mend the Instructions;' though the Attorney-General did lay it upon me, as if I had corrected and amended them, when I did neither read them, no, nor so much as touch them in my life. The substance of the commission, he tells you, was to authorise the lord Willoughby of Parham, Massey, Graves, and others, to assist their brethren of the Scottish nation in their treaty. Now to this there is a manifest contradiction in another man's testimony: For capt. Far swears that the Commission he speaks of was not to treat, but only, as private persons, to advise that the king might agree with the Scots upon the interest of religion, and the terms of the Covenant; that he might not be drawn away by the high-flown Cavaliers and Malignants. So that Far overthrows this testimony of Adams. Adams says it was to treat; and Far says it was not to treat, but to advise. But be it the one, or be it the other, I detest both; I had no hand in, and gave no assent unto it, but manifested my dissent to the whole. He being likewise asked (for I am still upon Adams's testimony) whether at a meeting it was not propounded at my house to write to the queen, and to Jermin and Percy, to mediate with the king to agree with the Scots: To this he answered, No. And truly he might very well answer so; for I am sure I did never in all my life hear of a motion so much as of a letter to be writ to any of these three persons, to the queen, Percy, or Jermin; and should have loathed and abhorred the very thought of it; and should think that cause the worse, wherein these persons were engaged. Being asked whether there was not a letter from Percy, that writ for money to be sent to the king; and whether the answer given was, That they should stay till the king and Scots were agreed, and then to send money; Adams in this did me this right: He confessed he saw such a letter writ; but (says he) I only saw it in the hands of one Mason: a man, who, for my part, I never knew nor heard of till I was in trouble. And being asked whether this letter from Percy was read in master Love's house, he said, Certainly no. Being again asked, whether about August there was not a letter written from Massey, wherein he said he had back-friends in Scotland, and complained that

he was not promoted there, and whether that letter was communicated at Mr. Love's house: In this also he did me right; for he answered, 'No certainly, that letter was not; to the best of my remembrance, read there: I heard of such a letter, but saw it not.' Then being asked whether one Sterks was not a Scotch agent; and whether he did not use to come to my house: To which he gives this Answer, 'We took him to be a Scotch agent, and he met sometimes at master Love's house.' Now, Sir, as to that, he supposed that he was an agent, but doth not swear that he was so, much less that I knew him to be so. Nay, I can swear, upon the best information I have had both from his own mouth, and the mouths of others, that he was no agent; for he lived in England 11 years, and had not been in Scotland in 14 years.

And I heard himself say so when he went away upon the act: and I asked him, Are you employed by the Church or State of Scotland? And he told me, No, he was not. It is in your breasts whether you will believe me, or no. And likewise Mr. Blair, when he was here in London, did affirm to me that he was a poor honest man; and that he was no way employed as an instrument of State. I know nothing of the man's agency: he be agent or not, I never sent letter or message by him, nor received any from him in all my life. But I see it is laid heavy upon me in my charge, that I contributed money to him; but no man in his depositions did prove that I ever gave him a penny. Adams being asked whether master Love did not write down the sums of money that was to be contributed to Massey; in this he doth me right also, for he saith, 'Master Love had a Paper in his hand, but I did not see what he wrote.' And therefore to that I need not answer. Being further asked, Did not master Love put the first letter of their names before the sums which others wrote? he answered, He could not say so. Being asked further, Was there not a letter penned by master Love and Dr. Drake? this Answer he gives, 'There was a letter, but,' says he, 'I cannot deliver it upon my oath that it was penned by them; but I thought it was so.' He could not tell to whom this Letter was directed, but said, 'It was declared to be directed to the General Assembly of Scotland.' Now, as I observed in the beginning, this is only the single testimony of one man. And, indeed, it was the first question, as I remember, that was asked me, that was of moment, when I was examined by the Committee, whether I did not pen this letter. I did declare to them in the presence of God, 'That I neither penned that, nor any other, to any person of the Scottish nation, since the wars began.' And this I declare in the presence of the same God, still to be a truth. Being asked further, Was master Love present at some time of this meeting? He answered I was: and the reason why he thought that we might pen it, was because of the language of it. Mr. Attorney General upon

this, I remember, uses this expression, 'My lord, this is very high; after we were engaged in blood, that a letter should be sent.' But to this I say, there is only a single testimony that such a letter was writ; and whether it was sent or no, he doth not prove: nor doth he prove that I writ it: and I declare to you that I never writ it. As touching this letter, which Mr. Attorney General is pleased to insist upon so much, Adams being asked whether it was agreed upon that this letter should be sent, he gave this answer, 'It was after the same manner that other things were agreed upon; but there was no vote passed.' And therefore he cannot prove my particular and express assent to the sending of the letter, or any other letter whatsoever. And here to take off the jealousy of a correspondency, which in the close, through the grace of God, I shall clear to you; but to take it off now a little, before I come to it: if there had been a correspondency maintained, would it have been imaginable that from the time of the Fight at Dunbar, which I think is ten months since, to this time, that there should be no letter that any man can say, nor that I did certainly know of, that either was written, or conveyed, or debated upon to be written, from that time to this very day, to any of the Scottish nation? And yet all this tends to aggravate matters against me, and all the burden is laid upon my weak shoulders. Other men that have heavy loads have laid them upon my back, to lighten them from off themselves. Touching this Letter, he saith, 'This was the substance of it, or it was to this effect, or purpose.' And again, I insist upon it to beseech your lordship and the court, to take heed what you do. It concerns you more than me: it concerns my life only; but it concerns your honours, and lives, and souls, and all, that upon an uncertain evidence you do not spill a man's blood. The man never read the letter, only he heard it read; and then he brings into that and other letters, 'This is the sum of it, or it was to this effect.' And though this man hath done me injury in some particulars, yet in others he hath done me right: for being asked, Did master Love write letters, or receive any, or mend those Instructions? he only swears he saw the letters; but cannot say I did read them. Being asked whether I did give my consent to the sending away of that letter after Dunbar-Fight, which is so much insisted upon, and so greatly aggravated, he did thus faright me; he said, 'I will not swear he did give his consent.' Being asked whether I was a correspondent, he said he took me to be a correspondent: and upon these words I had leave to ask him this question, Whether he knew I was a correspondent? To this he said, That letters were heard by me; but, said he, 'I cannot swear that he was a correspondent: I did conceive master Love to be a correspondent; but I dare not say so: and I dare not swear that he was a correspondent.' So that herein likewise there is nothing but his humbly

conceivings, and his suppositions; according to which I hope you will not pass any censure upon me. And thus I have done with Adams's testimony.

The fifth testimony is that of Jaquel, which I do here again in court except against as no legal Witness; for he did declare he could not in conscience take an oath against me. He did well nigh half an hour declare he could not swear, but that he would make a narrative or relation of what was true. I did intreat your lordship's leave to put it to him, whether he was under an oath, or no? and he said, twice at least, 'I am as good as under an oath.' If any person, good or bad, come under an oath, I must stand or fall by his testimony; and, according to God's ordinance, an oath is to decide all controversies: but the man declared he was not under an oath, and went out of the court, and was fined 500*l*.: and when afterwards he was called into the court again, he did only put his hand upon his buttons on his breast. So that this was not any taking of an oath; but fearing his fine, he did it, though with much seeming regret of conscience; and I am informed this day that he denies that he was under an oath. And if so, then I have nothing to say to his testimony; and so shall not speak to it, but only as to a bare relation and naked information. There is nothing that doth concern me in his testimony, but only a concurrence with Potter: Potter says he coming to my house with some letters, as he saith, one from Bannfield, another from Argyle, London, and Lothian, and Belcarras, and another from one master Bailey, if I remember right. Now, Sir, as to these letters, I do not deny but that they brought them to my house; nay, I do acknowledge those two men did bring those letters to my house, at leastwise which they said were such: but whether they were the originals or copies, I know not; for I never read nor kept the letters, but they carried away the letters with them. And capt. Potter said, 'Master Love, I have news to shew you;' at that very time when Mr. Jaquel and he came to shew them at my house, 'This witness, I cannot call him so, but this informer saith, that being asked what was done upon the hearing of those letters, he said Potter read the letters; but that there was no agreement upon it, but an utter dislike in all that heard them about the contents of them. And he hath these words further: 'It was,' says he, 'a trouble, I am confident, to them that heard and read the matter of those letters.' But being asked, Did master Love agree to the giving of 40*l*. to Bannfield and his man? To that question he answers thus: He said there was no Agreement; but it was thought convenient by all. Upon this I craved leave of your lordship to ask him this question, How he knew my thoughts, that I thought it convenient? To which he gave this Answer; 'I cannot say any thing, that master Love did say it was convenient.' So that therein, though he might presume upon a man's thoughts to know them, yet he must only judge

my thoughts [by my words, as the tongue and heart agree; for he is not a God: but he doth not say that I said it was convenient. Nor did either of them prove that ever I gave a penny either to Bamfield or his man.

The last Witness that came, in against me, is capt. Far. And, indeed, I do not know what to make of his testimony: I will not call it a prompting; that will be thought too bad a word; but certainly it was such a testimony that I never heard produced in any court in my life: For Master Attorney General, and some others here, did ask him 98 questions. So that the man spake nothing deliberately, but spake by reading out of his private examinations, which is extra-judicial to be brought in court, where the Witnesses are to speak *viva voce*. There was, I say, so many questions, besides those I had leave to ask him, propounded to him, during the time he was upon his oath. And the man was of a dull spirit, and slow of speech; and I did perceive him to be so possessed with fear, and that he knew not what he said; For he hath manifest contradictions in his testimony, which I believe all the court will see, and therein concur with me, when they come to hear them. The first word I heard him say in court was this, To desire the benefit of his papers. It seems he did suspect the badness of his memory, that he must have his papers to help him, and papers written by another, before he would depose in court against me for my life.

Being asked, whether upon the ending of the treaty of Jersey there was not a letter came from Titus, to desire somebody to come to Calais; and whether that letter was read at my house; and whether at my house Alford was desired to go; he affirms he was, (which none else did) and which is a most notorious falsehood. I have no rancour in my heart against him; the Lord knows I have prayed for all those that persecute me; and my heart cleaves to them in love and pity. I do not tax the badness of his conscience, I think he dares not be so vile; but I do tax his memory in things done so long ago. And afterwards he says, he could not remember aught, though he did pretend to remember, because they were done so long ago; yet before he did affirm them. Now to demonstrate this, that he says in this clause, to be false, that Alford was desired in my house to go, Alford himself says he was never at my house till he came from Calais, which is certainly true; And therefore Alford could not at my house be desired to go to Calais. When there was an account given of Alford's return from Calais, then I know he was there, though I never spake with him before that time, as I remember; nor was he ever within my doors till after his return. But, says Far, 'I cannot say Master Love was present while Alford's return was there read; for sometimes he was absent.'

Then further, being asked what was the substance of that copy of the letter from the king that Alford brought from Titus, he answered,

That the sum of it was this, That the king of Scots did declare he would give satisfaction to the Scots; and in order thereunto, he desired commissioners to be sent over to Breda. These are the words of his testimony. Now, Sir, this is but the single testimony of one man; and it is contrary to the testimony of that very man that brought over this letter: And if any man knew the substance of the copy of the letter pretended to be from the king, it must be Alford, that brought it over: Certainly none could know it better than he. And therefore for this man to be so strangely besides himself, and to forget himself so, as to say this is the sum of the letter, when he that brought it saith the contrary, and did not know that this was the sum of it, this may seem strange; and I hope you will judge of the weakness of this testimony. Being asked whether he did not conceive this to be the copy of the king's letter, he did me right in that; for he said he could not tell whether it was the copy, but that Alford told him he brought over a copy of the King's letter. And Mr. Attorney-General was pleased to aggravate this of capt. Far against me: Says he, The king sent over for commissioners to treat; and accordingly at Mr. Love's house it was agreed upon that commissioners should be sent, and there were persons named. To this I say, That, God is my record, I never in all my life heard, as I remember, of any letter from the king to that end, that commissioners should be sent over. And Far doth me right herein; for in answer to that question, Was your commissioners agreed upon? he three times answers negatively. I do not perceive that he remembers himself so well in all his testimony, as in that particular. Being asked whether the Commission was agreed upon, he said it was not agreed upon by the company.

And herein he did me more right than any man; for he gave my reason, 'For (says he) the reason given was, Because private persons could not give a Commission.' And though he hath done me more wrong than any man, yet herein he hath done me more right than any man. Being further asked, Was it not debated to send a Commission over? Drake, he said, 'read a paper in the nature of a Commission; but it was not agreed upon by the company, because private persons could do no such thing.' And a third time, he says, 'The Commission and Instructions were read in a company at Mr. Love's house;' (that he affirms, and that I do not deny) 'but not agreed upon.' And further he said, He did conceive, to the best of his remembrance, it was in the name of the Presbyterian party of England: But, says he, 'I cannot positively say it was so; for I did but only hear it read.' Then your lordship asked him this question, Did you say that the Commission was not agreed upon, but that the Instructions were? To this capt. Far said, That Wm. Drake undertook to draw up the Commission and Instructions; but yet, says he, 'I cannot say



'that they were either drawn up, or sent.' Again, he says further, (and herein he doth me more right than Adams or Alford doth) Adams, he says it was not agreed upon; yet he saith thus, There was a Commission read for to treat; and so says Alford; But this man says directly, That this supposed Commission was not to treat in the behalf of the Presbyterian party. And it had been a folly for private men to assume such a vain title to themselves. So that he says directly, upon your lordship's question to him, that it was not to treat, but to advise the Scotch commissioners, and the ministers especially, to agree with the king upon the interest of religion, and terms of the Covenant. But being asked, Was it not in the behalf of the Presbyterian party? he answered, No. Being further asked, Was there not an agreement at Mr. Love's house for a letter to be sent to the queen? Herein also this man doth me right; he said, No, my lord. And yet he contradicts himself likewise, for being asked in the next question what was the substance of that letter to the queen, he answered, The substance of the letter to the queen was, that she should persuade the king to give satisfaction to the Scots in their just demands. Now, either he must fear of this letter somewhere else, or else find some fiction to himself, that this was the matter of the letter, when there was no such letter 'in rerum natura.' The next thing he charges me with, is, That I should say it was agreed that money should be raised for Massey and Titus; and he names the sum, he thinks 250, or 300*l.* and that I thereupon should particularly move him with this question, 'Capt. Far, what will you do?' Now, I beseech your lordship and the court to consider, that he doth not swear that I said 'we were agreed,' but it was agreed; and that might be the act of other men, and not mine. And in another place he saith, 'They agreed;' but he doth not say that I said 'we agreed,' to include myself: But to that, That I should move him, and say, 'Capt. Far, what will you do?' Truly this is but a general question. And he himself did me thus far right; When I had leave from the court to propound this question to him, 'Capt. Far, did I move you, or say to 'you, what money will you give for Massey or 'Titus?' he answered, he did conceive it was for that use. So that he proves not against me, that I moved for money for Massey or Titus; but only that I should say, 'Captain Far, what will you do?' And if you observe the words of the testimony, they are these exactly. He tells you that he brought 5*l.*; for there is all that ever I am charged with. I am not charged with lending a penny; but only that 15*l.* was brought to my house; 10*l.* by Potter, and 5*l.* by this man, And he affirms that he left this 5*l.* at my house. And herein I perceive a contradiction in the man; and therefore it is hard to determine when he speaks true, or when he speaks false. These are his very words. 'Mr. Love,' says he, 'asked me what I would do; and I did lay

down 5*l.* upon Mr. Love's table, when several persons were in the room.' And being asked, Did Mr. Love receive this money? he said he could not tell; but was loth to tell who he thought received it. But in his last word, save one, that he spake in Court (which made much for my advantage) he said, he thought I did not receive it; and God is my record, I did not: But he said another man did, and named captain Massey. But the contradiction I observe is this: He tells you he laid down 5*l.* when several persons were in the room, and in the next question but one being asked, Was Mr. Love in the room? 'Yes, my lord,' says he, 'but I cannot say any body else was there.' So that therein the man evidently contradicts himself. And it appears he was under a very great fear, and even confounded by the many questions propounded to him: I asked him further, 'Did I bid you lay it down?' Says he, 'I cannot say that you bid me lay down the money.' Being asked, Was this way of laying down of money to prevent discovery? he said he did it under that notion. But being asked by me, 'Did I bid you lay it down under that notion?' he answered, he could not say I did. So that I neither directly nor indirectly did bid him bring money to my house, or lay it down when it was brought there: But other persons were in the room; and he conceives what person took it away. Therefore I beseech you make a candid and fair interpretation of what I have said or done.

Being asked about the copy of the king's letter, that Alford says he brought over from Titus, whether I was in the room whilst it was read, he said, 'I cannot say that he was there when it was read; but he was there during some part of the communication.' But, says he, 'I cannot say he was there at the reading of the letter; nor can I say he was present whilst the narrative was read.' He observed I was often called away, and was absent; and says he, 'I cannot say there was any such thing done by Mr. Love. And I asked him this question, 'Did I send, or agree to send major Alford to Calais?' He answers, He thinks I did not. And herein he falsifieth his former testimony; for he said major Alford was desired in my house to go to Calais; and yet Alford swore he never was in my house till after he came from thence. But herein he doth me right too (though with contradiction to himself): He said it was agreed at my house that Alford should go; and yet now he says he thinks, I did not agree to the sending of Alford.

Being asked further, whether I did give consent to the sending away the Commission, he answered, 'I cannot say Mr. Love was there when it was sent away.' And truly I may say, who brought it away, or who drew it up, and what was done in it, I cannot tell. There might be a thousand Treasons in it, for aught I know; for I did neither own the reading of it, nor the sending of it, but did utterly protest against both. Being again asked, whether I agreed to the sending of it away, he answered,

'It was agreed upon by all, that we could not send the Commission away.' When I asked him, 'Did I say to you, Captain Far, will you contribute 5*l*. for Massey and Titus?' he gave this answer, says he, 'You asked me what I would do; so that I conceived it was for Massey and Titus.' And he affirmed he laid this 5*l*. down in my house; but did not say that I received it. And in the presence of God I speak it, I never saw it, nor received it in all my life.

And thus with much acknowledgment, and blessing God, and thanking your lordship and the Court, you have given me leave to take a brief survey through the Depositions of the Witnesses, though they have been very large and the Charge against me very high.

Not having spoken to the Depositions (before I shall crave leave to speak something concerning myself, and make humble proposals to this Court), I shall add but one word, and it is this: I was loth, before I saw witnesses face to face, to confess any thing; I deemed it against nature for any to confess against himself, unless he could be sure his confession should not prejudice him. And I might have been guilty of my own blood, if I had confessed; for then, did the matter confessed amount to Treason by your law, my life would be at your mercy, and you might hang me upon mine own confession. And upon that ground I went resolved to the Committee; and through the grace of God I resolved not here to confess a word nor tittle, till I heard what proof was brought in against me. And now I do ingenuously acknowledge that there were several meetings at my house; that these persons met there; and that this Commission was read there, but I did utterly dislike it, and dissent from it. And that I was present at the reading of letters, either at the beginning, or end, or some part of them, I do acknowledge: And this I say, that I was ignorant of the danger that now I see I am in. The Act of the 2nd of August, 1650, doth make it Treason to hold any correspondence, or to send letters, though but in a way of commerce, into Scotland, let the matter of them be what it will. Now herein my counsel acquaints me with my danger, That I being sometimes present when letters were read in my house, am guilty of a concealment; and as to that, I do humbly lay myself at your feet and mercy. But as to Treason, I do not know any personal act of mine proved against me, that brings me under any act of yours. And thus having briefly spoken concerning the Charge in general, and concerning my accusers, and having briefly surveyed their testimony, I shall humbly crave leave to speak something concerning myself, and I shall be very brief in it.

Concerning myself, it is needful I should speak a word: I would not stand under misrepresentations, to seem to be what I am not. I am presented unto some as if I were a Malignant, an apostate from my first principles, a mover of sedition, and what not, but what I

am. Wherefore I am constrained to speak a word in my own vindication, and I shall make the apostle's apology, 'I am become a fool in glorying; but ye have compelled me.' I count it never lawful for a man's own mouth to praise him, till another man's mouth accuses him; and then he may without vanity be his own vindicator. What I shall say of myself, the Lord knows it is not voluntarily, out of an affected ostentation, but by compulsion, for a necessary and clear manifestation of my principles and practices now suspected. As touching Malignity, I hate both name and thing: And as cardinal Farnesus said of himself profanely, that if he knew any part of him infected with Lutheranism, he would cut it off and cast it into the fire: that I can say truly that if I knew any part of me infected with Malignity, I would cut it off with the pruning-hook of mortification, and by an ingenious retraction before you all this day. God is my witness, I never drove a malignant design, I never carried on a malignant interest. I detest both. I still retain my old covenanting principles, from which, through the grace of God, I will never depart for any terror or persuasion whatsoever. When I look upon all the vows and covenants, and declarations, and protestations of both houses of parliament, I do find untractableness between my judgment and them, and am not conscious to myself of any thing that I have done in opposition or contradiction thereunto. And therefore I may say as Jeremy did when he was accused, in the like case, of making defection to a contrary party, Jer. xxxvii. 13, 14, 'Irijah said to Jeremiah, Thou fallest away to the Chaldeans.' Then said Jeremiah, 'It is false, I fall not away to the Chaldeans.' So, if it be charged upon me that I am fallen from my first principles, or that I am fallen to Malignity, I say to any that shall so accuse me, it is false, I fall not away to Malignity; I do retain as great a keenness, and shall whilst I live, and as strong an opposition against a malignant interest, whether in Scotland, or in England, or in any part of the world, against the nation where I live, and have to this day, as ever I did in former times. I am no incendiary or evil instrument, to divide the nations one from another: God knows the grief of my heart hath been for the divisions, and the desire of my soul hath been for the union of both the nations. And if I had as many lives as I have hairs on my head, or as much blood in my veins as there is water in the sea, I could count it all well spent to quench the burning that our sins have kindled between the two nations. I have all along engaged my estate and life in the parliament's quarrel against the forces raised by the king: My appearing in their cause was not from any aim at profit, but out of a persuasion of conscience and sense of duty. I may speak it, as Paul doth it of himself, 'I was in labours more than they all.' I speak it without vanity; I was, according to my obscure station and mean condition, in doing and giving in the parliament's quarrel, more than many. Many gave

out of their abundance; but I out of my want: And as Christ spake to the widow who gave two mites, 'That she gave more than they all; for she gave all that she had, even all her living.' So did I; though I gave my mite, yet I gave my all. And I did not only deem it my duty to preach for the lawfulness of a defensive war, but (unless my books and wearing apparel) I contributed all that I had in the world: And that was no small sum, considering the meanness of my condition. And I have in this day a great sum due to me from the state; which is still kept from me, and now my life endeavoured to be taken from me. And yet for all this, I repent not of what I have done; though I could from my soul wish that the ends of that just war had been better accomplished: Then should we have been happy, and united among ourselves, and honoured among the nations round about us. I am so far, I say, from repenting of what I have done, both by doing and contributing, and suffering in the parliament's quarrel, that were it to do again upon the same unquestionable authority, for the same declared ends, and against the same malignant persons, I should manifest as much readiness of mind to engage according to my measure, as ever I did.

And thus I have declared myself touching my principles in these particulars; I shall now crave leave to express myself a little touching my sufferings; and then to make but a few humble proposals, and so cast my life into God's hands and yours. Touching my sufferings, I may say that my whole life hath been a time of affliction, either of body or mind: God sees my heart to be a tough and knotty piece, that it needs so many blows to break it. I may say with the Psalmist, 'I have been afflicted from my youth up,' and from my youth up have I met with opposition. From the prelates, being persecuted by them merely for conscience-sake. It is near 20 years since I was cited to the Bishops' Courts: I have been often troubled for hearing of sermons, and discharging other exercises of religion, which were an offence in those days. When I was a scholar in Oxon and Master of Arts (I do not speak it out of vain ostentation, but merely to represent unto you, that what I was I am, and what I am I was), I was the first scholar I know of, or ever heard of in Oxon, who did publicly refuse in the congregation house to subscribe unto those impositions or canons imposed by the archbishop, touching the prelates and common prayer; and for which, though they would not deny me my degree, yet I was expelled the congregation house, never to sit as a member among them. When I came first to London, which was about twelve years since, I was opposed by the bishop of London; and though I was called as a lecturer to Ann Aldersgate, yet it was near three years before I could listen upon any lecture. After this, about the year 1640 or 1641, I was imprisoned in Newcastle, merely for expressing myself against the errors of the service book, and was removed from pri-

VOL. V.

son there, by a Habeas Corpus, to this place; and in this Court of King's-Bench I was acquitted. After this, about the beginning of the wars between the late king and the parliament, I was the first minister that I know of in England, who was accused for preaching of treason and rebellion, merely for maintaining in a sermon, in Kent, at Tenderden, the lawfulness of a defensive war, at the first breaking out and irruption of our troubles; but was then publicly acquitted in a Court there, and recovered costs and damages of my accuser. After this I had a little breathing time, whilst the two houses of parliament were in power; only I was once complained against by the king's commissioners at Uxbridge, for preaching a Sermon there. I did not know that I should preach there till the Psalm was sung; and did only preach a Sermon which I had preached the day before at Windsor Castle. I was, I say, complained of by the king's commissioners to the house, for that Sermon; but within three weeks I was acquitted and discharged by order of the house of commons. That Sermon is much spoken of, because it is so little seen, it is so obscure a piece; and many imagine as if the keenness of my affection was blunted from what it was in that Sermon. But I declare unto you, that I come up to this day to every title of that Sermon. I hear it is lately printed; and if it be printed according to the first copy, I will own every line of it, as that to which my heart and judgment concurs to this very day. After all this, since the late change of government, I have been three times in trouble: I was once committed to custody by, and twice cited before the Committee of Plundered Ministers: but there was no sufficient proof against me, and so I was discharged.

But now last of all, this great and last trial and trouble is come upon me. I have been kept several weeks in close prison, and now I am arraigned for my life; but herein is my great comfort, even that which was the Apostle's, 2 Cor. i. 10. 'God that hath delivered me, he doth deliver me, in whom I trust that he will yet deliver me.' And that that shall be made good to me, Job, v. 19. 'He shall deliver thee in six troubles, yea in seven there shall he evil touch thee.' As Cato, he was accused thirty-two times by the unkind state whom he faithfully served, and yet after thirty-two times accusation, his innocency and uprightness brought him off. Why should not I be confident in my God, who have had a life-time of experience of his care and love towards me? It is not the danger of my life troubles me; I am a sickly man, and I know a disease will ere long kill me, whatever you do with me: but this grieves me more, that I should suffer from their hands, for whom I have done and suffered so much in my obscure station, and according to my weak measure. Had it been an enemy had dealt thus by me, and made such an eager prosecution of me, and such high aggravations of that which in the simplicity of my heart I have done, it had not been so much; and as

M

I told the Committee when I was examined by them (who charged me with jesuitism and non-ingenuity, because I would not confess against myself and others), that though I honoured them as private gentlemen, and should acquaint them with what myself had done, when it should not be a snare to me; but when they shall apprehend me by a warrant for treason, and examine me in order to a trial for my life, in no judicature in the world will I confess a word, till I first hear what will come in against me. Now, as I told them then, I never wrote letter, nor received letter, nor sent or lent money to any person of the Scottish nation. Now that I should meet with this hard measure, to have the most rigid and severe interpretation put upon all my actions, to be looked upon with so jealous (I might say with a worse) eye, that have in my measure ventured my all in the same quarrel that you were engaged in; and lifted up my hands in the same covenant, that have took sweet counsel together, and walked in fellowship one with another: that from these I should have such hard measure, this, this troubles me greatly. Had I been so dealt withal at the junctio at Oxon, I should not have been so troubled at it; but to be dealt so with at Westminster, this is that at which I stand amazed: yet, blessed be God, I am not afraid; my conscience doth not tell me of any personal act of mine proved against me, that brings me under any of your laws as to treason.

And thus having expressed myself concerning my Charge, and the Witnesses, and myself; I shall now in the close of all say (whatever tortured collections or inferences are drawn from my practices, and however lawyers may aggravate those things that in part have been proved against me), yet I do declare in the presence of God, that whatever I have done, in the simplicity and integrity of my heart I have done it; and did deem it to be consonant and agreeable both to my conscience, and to the protestations and covenant I have taken: and I have done nothing out of animosity, or from a spirit of revenge. And thus I have done concerning myself.

I have only a few humble proposals to make to your lordship and the Court, and then I shall leave all to God's determination and yours. To you that are my judges, I humbly crave this of you, and I do it upon your lordship's words the first day of my appearance here. When you were pleased to deny me counsel, you said you would be counsel for me: and I beseech you be so, for you are judges both of matter of law and matter of fact. I may make use of that passage, Prov. xxxi. 8, Solomon says there, 'That rulers must open their mouths for the dumb, in the cause of all such as are appointed for destruction.' Truly, my lord, I am as a dumb man before you; dumb in matters of law, I cannot plead one word for myself; I beseech you, be as Solomon's rulers were, and open your mouths for him that is appointed to destruction; you who are my judges, be my advocates, my life lies in your hands. And

then, I beseech you, let me make this humble motion to you, That you would not count any thing that I have done to be out of animosity or stoutness of spirit: Truly, nothing but conscience could carry me through all my sufferings; I could not leave such dear relations that God hath given me, and such a loving people, and comfortable livelihood, as any minister hath within the walls of London: nothing but conviction of conscience can carry me another way; and till conscience be fully satisfied, I cannot stir one step.

The next thing I beg, is, to beseech your lordship and the Court to put a candid and fair interpretation upon all that I have done, or that by witness you have heard; that it was no malignant design, though I do not own the management of any design: I never writ letter nor sent letter to any of the Scottish nation; yet thus far I own the thing, that it was agreeable to my judgment and conscience. For I thought the interest of God and religion, and the good of the nation, would be more advanced if the king went into Scotland upon Covenant terms, than if he should fall into the hands of the Irish rebels, or offer this nation to the Turk or Spaniard, or any other to come in and make a prey of it. I did judge it would be a foundation laid of great troubles and blood, if he were not received by that nation. And though I did not, and do not in the least own either the Commission or Instructions, or the way of management of that business; yet I confess the agreement between the king and Scots I desired, and deemed it my duty upon this ground, one clause of the Covenant being, to seek the union and good of both nations; and those who endeavour the contrary, are declared by the Covenant to be incendiaries, malignants, and evil instruments, who not only divide the kingdoms one from another, but divide the king from the people. Now they declaring him to be their king, according to my apprehension I thought it agreeable to my Covenant, to pray and desire, as a private man, and no more, for an agreement between the king and them, upon those terms, consistent with the safety of religion, and the terms of the Covenant.

And thus I have opened my heart to you: the favourable interpretation I humbly beg of you, is this: that things might not be taken in the worst sense: 'Non est reus, nisi mens sit rea'; he is not guilty, unless the mind be guilty; I heard your lordship say so at Guild-Hall, as I remember.

The Lord knows in the uprightness of my heart I have done what I have done. It is a maxim in the law, (I have read it in Divinity-Books) 'Amplandi sunt favores, et in poenis benignior interpretatio facienda.' favours are to be amplified and enlarged by magistrates; but in punishments the most benign and favourable interpretations must be made. Now of my actions the harshest interpretations are made: I have a charge laid against me, which I deem (and as my counsel tells me) to be rather a flourish in law, than reality of matter.

I stood amazed when I heard the Charge against me, I thought it had rather been against some other man than against me. As if I should send to the queen, Piercy and Jermin ! Herein I did rather venture my life upon a trial, than to lie under that obloquy which that charge did lay upon me. Therefore I again beseech you, to put a fair and candid interpretation upon what is proved against me.

I remember a phrase, 'summum jus est summa injuria;' to be over-just, is to be injurious. 'Be not over-righteous,' may refer to courts of judicatory. Herein I acknowledge, that my not revealing what my accusers have done, this layeth me under the fault of a concealment, for which I lay myself at your feet.

The next humble request I have to make, is this, to intreat your lordship and the court, that you would not hearken to any politic suggestions that may be laid before you: I know under what disadvantage I lie, that am the first minister in England try'd for treason, in a business of this nature, and what a prejudice this is to me, to make an example upon.

The first suggestion that I humbly intreat you would not hearken to is, that it will not be for the honour and interest of the state, if I be not condemned. Truly, it is for the honour of the state for you to do justice: if you have found, that I ever writ letter, or sent or received letter, or lent money; if in these regards you have found me within your acts, spare me not: but if I have been only present at the reading of letters, and have been silent at what others have done; therein I lay myself at your mercy to shew me favour. It was a suggestion to Pilate, 'If thou sparest that man, thou art no friend to Cæsar;' and so if you do not condemn me, you are no friends to those who commissionate you: but be friends to yourselves and families, and take heed that you bring not guiltless blood upon you.

And here (and so I shall have done) in the close of all, I do acknowledge, that in many particulars, as touching not revealing (I say not as to personal actings, nor do any prove it against me), I do fall within your acts, as to the censure of a concealment; and herein I humbly beg your mercy. And however I may be judged to be a man of a turbulent and unquiet spirit, yet those who know me in my relations, will not say so of me; and my people, over whom God hath called me (I think), will say, I am a man who desireth to live quietly in the land. But however my spirit and principles are questioned, yet I resolve by the grace of God to lead for the future a quiet and peaceable life in all godliness and honesty.

I have but one word more to close all I have to say for myself, (for I have made no plea in law; in those matters I am as a dumb man, and cannot open my mouth,) and 'tis this: the Charge and Depositions lie before you, and I will but lay this before you also: that if so be my fact should deserve death, which I believe it doth not, and I hope you cannot find me

under your own acts as to treason; yet if you do censure me rather upon a political interest, than from the merit of the fact, the Scripture accounts not that justice, but murder. Jehu put to death Ahab's son's, and that by the command of God; but he did it upon a political interest, to establish himself in his new-gotten government: and when God reckons for this, he says, 'I will avenge the blood of Jezreel upon the house of Jehu.' To do any thing upon a political interest, tho' the fact may deserve death, the Scripture counts this murder, not justice.

And I beseech you, let me suggest one thing to you, though I am 'a worm and no man,' and deserve not to be regarded amongst the children of men; yet what I have done and suffered, let it be a little thought on by you: and let me urge that of Abiathar the priest: he did an act that was not justifiable, and saith Solomon, 'Thou art worthy of death; but I will not at this time put thee to death, because thou hearest the ark of the Lord God before David my father, and because thou hast been afflicted in all wherein my father was afflicted.' I leave it to your own consciences to make application. Many things else might be suggested against me, and all to exasperate and exacerate your minds against me, to make you with less regret of conscience to pass a doleful sentence upon me; which I hope you cannot, and for the fear of the Lord you dare not: but if you should, (and so I have done) I will say to you, as Jeremiah did to the rulers of Israel: 'As for I behold I am in your hands, do with me as seemeth good and meet unto you: but know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon yourselves.' But I will say as the apostle did, 'I hope better things of you, tho' I thus speak.'

And thus I commit myself, and my all, unto God, and to your judgments and consciences.

#### *Mr. Attorney-General's REPLY to Mr. Love's DEFENCE.*

*Att. Gen.* My lord; You have heard him say much, and it had been much better for him if he had said less. My lord, when men go out of the way of their own calling, they very often err; and truly I may attribute much of Mr. Love's confidence to his ignorance; my lord, to his ignorance of the law: and when men meddle beyond their own bounds, they do transgress. Mr. Love hath made you a continued speech; my lord, I do find the old proverb commonly true, 'In multitude of words there wanteth not evil.' And should I say nothing against Mr. Love, my lord, he hath said enough against himself, in that that he hath now repeated, even to his own condemnation, in that which he acknowledgeth, my lord, (I cannot say ingenuously, though himself hath said so) to be rather a misprision of treason and a concealment. My lord, acts of concealment are not so long continued, they have not so long continuance: and, my lord; you

very well know (for the satisfaction of the gentleman at present, and some else that hear me) that he that hears a treason (for I do now go out a little in his own way) he that hears a treason must not look back before he go to the magistrate and reveal it, and if he be at the plough, he must leave his plough; if this gentleman were in his pulpit, he must leave his preaching: he that knows a treason, must go presently and reveal it: there must be no repetition of treason, my lord: Mr. Love, my lord, will be mistaken in that. But truly, my lord, I was very sorry, considering the condition Mr. Love now stands in, to hear those expressions from him that he hath made to you in relation to the past and present authority. My lord, I am not willing to repeat them, Mr. Love must hear of it another time. Truly, my lord, here is little of ingenuity (all men will believe) in this gentleman, that hath now laid it for a principle to himself, and all that shall hear him (and I think it not to be so Christian, so ingenuous), not to confess any thing any time; but that is ingenuity, that what is proved, that he will confess; and that is a high piece of ingenuity, that those things that are proved, he will ingenuously acknowledge: I, my lord, do not take that to be ingenuity, neither in my law, nor I believe in his divinity will it be. My lord, there hath been a great deal of care and pains taken by Mr. Love to take in pieces the evidence; I shal not undertake now to join them together, but in convenient time I shall, I doubt not, for the satisfaction of the court and their judgments, who, I must say, have been threatened by the gentleman; and, my lord, I hope for the conviction of himself. My lord, he knows there are shrewd pieces against him that he hath acknowledged, but he would take them off one by one; but when they are put together, they will not be single evidence, nor single testimony, nor single facts, but a continued reiteration and perpetuation of treason, a continued and series of treason. My lord, you are pleased to observe, that he hath no death appear from 1643 to 1651; so that in 1643, 1649, 1650, and 1651, in all these years, my lord, there hath been this constant repetition and transacting of treason.

My lord, I learn from him, and it is very true.—It is not good dallying with holy things; nor is it with states and commonwealths, it is very bad dallying with them; those that flutter there, will turn their wings at last; and it is not quirks of wit, nor strains of sense or nonsense, will, my lord, clear these things; it will not do it, my lord. My lord, he hath desired you will not hearken to private examinations; my lord, I have said so too, and there hath none been offered to you, but that which hath been public, and *visu voce*; all have been so. But surely, my lord, I could wish this gentleman, and all others of his profession, would meddle in their own sphere, and not to walk out of that, to come and teach counts what they should do, to teach the magistrate what is his duty. My lord, I do hardly think it be-

longs to them even in the pulpit to do those things: but to tell us we must not examine before-hand, and ask questions in private; my lord, we cannot then be prepared for felons and treasons. And, my lord, I say this confidence is much from his ignorance; for these things are very familiar, and must be continued to be done: so that these things are not well bronched by him, and I do think he will say at last, he understands not himself; and these, I hope, that hear, my lord, will say, I do not use it. For, my lord, I must say, it must be otherwise in all well governed commonwealths. My lord, he hath not denied, but acknowledged meetings at his house more than once, twice, or thrice: and truly, I did expect from this gentleman, that he would not have continued those fearful imprecations of calling God to witness, that he did never write letter, nor send letter, nor lend money. I had thought he would not have gone upon these equivocations: did he never move other men to write? Did he never move others to lend money? It is not to say, this and this I have not done; but I had thought he would have cleared himself totally of any guilt that way, either in relation to receiving, or bearing letters read; or lending or receiving money, or moving for money. My lord, to put it upon a particular case, this will not blind the eyes of justice, but you will be able to see it. He is pleased to say, my lord, he will not lay it to the badness of the witnesses' consciences, but to the badness of their memories. My lord, I hope in the conclusion their memories will appear to be right, and somebody's conscience else to be bad. And, my lord, for to hear this said by this gentleman that is a minister of the gospel, that it is a crime for these men to acknowledge their offences, this is strange: I had thought the first step to repentance had been confession; and that it had been no offence for any man living that hath committed a fault, or that thou hast committed a fault, to acknowledge it. In my law and divinity I thought it so, and I have not learned otherwise; and shall this gentleman take exceptions, because these gentlemen who have thought they have done amiss, have acknowledged their errors, and have craved mercy? My lord, I must say thus, If any deserve mercy, it is those that do acknowledge their offences, and crave mercy, and are sorry for them; and not those that are obstinate, and bid defiance to justice: prove what you can, I will confess nothing; that is not so conscientious or Christian a way. And for the witnesses, I do wonder that Mr. Love, of any man, should find fault with them; I cannot say they have taken sweet counsel together, but I shrewdly suspect they have taken very bad counsel together: these gentlemen are of his own choice, and of his own companions, and those that were conversant with him; and if you please to observe, at every word, Will. Drake; methinks that is a word of familiarity. But, my lord, for these, they were his companions, and whether I might say more, his

household friends or guests; but sure they were in his house very often, and were private with him, and in his chamber and study; and to cover all these actions, and these treasonable practices, and letters and designs, here they must come to hear news, and this must cover it all: they come for nothing but news, and our contributions must be for charitable uses; but you must not ask why or wherefore we lend money, but it is for charitable uses: neither God nor man will be blinded in these things; and if these fig-leaves be sewn together, it will neither cover nakedness nor treason. My lord, Mr. Love hath said (and in that given judgment against himself), that either to treat or advise with the king of Scots in Scotland, he detests them both. My lord, if he be guilty of both then, I hope, he doth detest and renounce himself, and then I think he hath laid your judgment somewhat; his own having past first, yours will easily follow. My lord, he confesses, that for this act of the 2d of August, 1650, he was ignorant of it, and of the danger of it. My lord, he very well knows that ignorance is no excuse; the act is a public act, and hath been long printed, now ten months since himself saith; and yet methinks I cannot reconcile that (that he that goes to make others differ), that he knew not of this act, and yet Sterks the Scotch agent, was banished upon this act, and there was a contribution for him for his going away: the same act that doth the one, doth the other. My lord, he hath been pleased to cite a saying of cardinal Farnesus, 'That if he knew any part of him infected with Lutheranism, he would cut it off, and throw it into the fire;' and so can he speak truly of himself, he would do, if he knew any thing of malignancy by himself. My lord, the question between him and us, is, what is malignancy? I doubt we differ in that; I doubt his sense of malignancy; I am sure by some words I shrewdly guess at, that I count this malignity, and I hope all this count, and I all that hear me, count that malignity, that I doubt his judgment leads him not to it, so I doubt we differ upon that.

My lord, he hath said, he was never an incendiary, or evil instrument; I wish there were not cause for you to think otherwise: but surely the gentleman hath made large imprecations, and hath spoken much for himself; but I believe he knows there is so much justice here, that he expects not to be believed in what he says. If it were enough to accuse, who should be innocent? And if it were enough to deny, who should be guilty? He doth not expect to be believed for his word certainly; for now he knows he stands in another capacity; and as things are alledged and proved on both sides, so he is to be believed, and no otherwise. My lord, he hath been pleased to reflect upon myself in many particulars; yea, and the court knows in what a capacity I stand here, as a servant to the state, to do my duty faithfully, and I must do it; and yet I must say, it doth not become me to

prompt witnesses; that word, my lord, was not well spoken. He is pleased to say in the commendation of himself, that he hath a place in London where he hath a very good congregation, and a very good competency of maintenance; and I heartily wish he had thought so really, and had kept himself singly to that. I do not think he will say, that in the duty of his place, as a minister of the word, to preach to instruct, to exhort, rebuke, reprove his people, or any under his charge, that ever the state did interpose or meddle with him, neither the parliament nor the commonwealth; then for God's love, my lord, why should this man interpose or meddle with the state? Had you not enough to do in your own calling? Had you not charge enough lying upon you, but must you be going abroad, and put your sickle into another man's harvest? I will say, the state did never trouble the gentleman in his duty; he did go on with as much peace and quietness as himself could desire, we interrupted not him; let him reflect upon himself, and whether others have dealt so kindly with him; when had he that liberty that now he hath had? You may be pleased to observe, himself says, twelve years ago he could not in three years in London get an admission to be a lecturer; and when he spoke in the congregation-house at Oxford, he was expelled there; he hath had no such measure here. Doth kindness provoke him to these things? Those that sin against kindness, are the highest transgressors. What provocation hath this gentleman had in his ministry, that he could

follow that, and have let the parliament and state alone? Doth he not receive breath here to live, and his livelihood to sustain himself and his relations? Why should you interfere to disquiet yourself and the commonwealth, when they did not provoke you? And let all judge, whether this should not convince you; and let me say thus much, that you have dealt foolishly, and have gone beyond your bounds, and have not kept within your limits, in what you have done in these things that you have acknowledged.

My lord, I speak this, that those may hear now that may not hear the other; for that which Mr. Love hath said, we must have some time to reflect, and to speak in the vindication of the proceedings of the state against this gentleman; which, though I think it needs not much, in respect of the court that hath heard him say so much, and confess so much as he hath done; yet for the lenity of the state, that hath moved them to take care of their own preservation: and I would not do it, but that he hath stood upon all terms of defiance with justice and majesty; and you have heard from a fellow-minister what he did the last day, and the principles he urged this day, which let me repeat again, there will be no living in society, if these things be let alone. My lord, it is much insinuated by him, that his blood will be upon you and the court; I would he had thought upon blood before these

things had been so transacted by himself: I am afraid (between God and his own conscience be it, and those that have had correspondence with him) that much of this blood that hath been spilt in Scotland, hath been made by their means: you hear him say, that what was desired by them (and in order to what it was) was, that the king of Scots might join with the Scottish nation, and not go to Ireland—that was his conscience. I do not know his conscience led him to meddle with those things, to meddle with state-affairs: but, my lord, if it be so, and thus hath been brought on by them, that one hath encouraged the king to join with the Scots, and the other hath encouraged the Scots to join with the king by hopes of parties here, which he himself acknowledgeth now, was undertook in the name of a Presbyterian party; though I think, and do believe it, for very many honest Presbyterians, that they would spit in his face, if he should say it of them: but I say these doings have occasioned the shedding of much blood, and a great deal of variance between the two nations, and the Lord knows when it will end. But, my lord, as he concluded for himself, you will be pleased, my lord, to give me leave (though not in that way of conjuration as he hath done) to say for the state, I shall not prevent your judgments; but it is better that one man than a state, should perish. And if this man be guilty of the treasons proved against him, I believe himself will judge, he had better perish, and suffer death, than the state should perish. All these actings of his have been underminings of the state clean through, carried on very closely and covertly in disguises, and not discovered: but he that dances in a net, will be caught tripping at last. My lord, before you give your Judgment, you will consider that justice to the commonwealth—

So, my lord, I have added what my bad memory, I hope not bad conscience, hath repeated to me, as might give some answer to what he hath said: But since he hath been pleased to take such pains to run through all and every one of the Evidence so exactly, and hath had three days given him for it; my lord, I shall ask but one for myself, and for those that are the counsel for the Commonwealth. My lord, this is all I shall say at present to you, and shall say no more till next meeting.

[Judge Keble, the Lord President, speaks after the Attorney General; the very beginning of his speech was not heard, he beginning very softly.]

*Id. President.* But again in this point, for the Presbyterian Government, if it be rectified, doubtless it tends to the peace of this nation, and all places, but not with a Scotch limitation. I deny that; nor limited by a Scotch Covenant.

The next thing is this; because you often fall upon distinctions of the law, and that you are ignorant of the law; the more to blame you, that profess the learning of the law of

God; for there is no law in England, but is as really and truly the law of God as any Scripture-phrase that is by consequence from the very texts of Scripture: For there are very many consequences reasoned out of the texts of Scripture; so is the law of England the very consequence of the very decalogue itself: And whatsoever is not consonant to Scripture in the law of England, is not the law of England, the very books and learning of the law: Whatsoever is not consonant to the law of God in Scripture, or to right reason, which is maintained by Scripture; whatsoever is in England, be it acts of parliament, customs, or any judicial acts of the Court, it is not the law of England, but the error of the party, which did pronounce it; and you or any man else at bar may so plead it. And therefore to profess you are knowing in the laws of God, and yet to be ignorant of the laws of England, when yet the laws of England be so purely the laws of God, as no law in the world more practical at this day—for you to be ignorant of them is not to your commendation, nor to any of your profession.

Then, Sir, for your going on in these ways: The Court with patience hath heard you, I think, two hours, or thereabouts, and you have done nothing but anticipated the Court: What! Do you think they have not understanding, and judgments, and consciences? They would have done it, they would have examined these witnesses precisely, and would have compared them, but you have taken up all this time by way of anticipation; and in a rhetorical way to do it! Let me tell you, that orators among the Heathens have been the greatest incontinents; and those orators in Christendom that do not set their judgments upon right ends, they are the most unworthy men in Christendom: For there are no heresies, murders, traitorous or treasonable practices and attemptings, and all the highest wickednesses that ever were committed in Christendom whatsoever, or in this nation in particular, but they have had some of that profession that have called themselves ministers of Jesus Christ, as the Jesuits of Jesus, and the priests of those; and all these things and high actings have still had some tincture of your coat in them. Therefore it is not your office can excuse you; your office is sacred as other Christian offices are, and you are no more divines by your office; but you are to remember, and you must know, that Christian justice that you teach in the pulpit, to act it in the Court, is of a higher nature than preaching is: And therefore in this, that you should advance your profession beyond the judicatories of this land, know, that judgment and justice is the highest religion in the world, both in Christendom and out of it. And this, Sir, we would have you know, that lawyers doctrine tends to this, and I hope hereafter you will be more obedient, and better versed to know these grounds of the laws of England, by which now you are called here.



I shall say no more, but take advice of the Court about you.

[The Court adjourns, and Mr. Love is commanded away.]

*The Fourth Day's Proceeding, June 27, 1651.*

Mr. Hall, the first Counsel for the Commonwealth.

Mr. Hall. My lord, the prisoner at the bar, Mr. Love, stands impeached before your lordship of High Treason, which Impeachment hath been read before your lordship and the Court. My lord, by that he stands charged with High-Treason, with several offences of High-Treason; That he in the years 1648, 1649, 1650, and 1651, with William Drake, Henry Jermin, Henry Percy, John Gibbons, Edward Massey, Syllas Titus, and others his accomplices, did traitorously, wickedly, and maliciously confederate, plot, and endeavour to stir up a new and bloody war in this nation, and to subvert the government now established without a king and house of lords.

My lord, that in the same years, since the death of the late king, he did, with other his accomplices, endeavour to promote Charles Stuart to be king of England, contrary to an act of parliament before that time made in this nation.

My lord, that in the same years he and his accomplices did traitorously and maliciously aid and assist the nation of Scotland, to the end that they might invade this Commonwealth; and hath adhered to the forces raised by the enemies of this Commonwealth.

My lord, that in the same time, between the month of March and the first of June, this present month, he hath traitorously and maliciously held and maintained correspondence and intelligence by letters, messages, instructions and otherwise, with the enemies of this Commonwealth, and to the prejudice of this nation; and in particular with Charles Stuart and the late queen his mother, and with Jermin and Percy, and other persons of counsel abiding with Charles Stuart.

My lord, That he hath likewise held correspondence and intelligence with the Scottish nation, prejudicial to this Commonwealth, and to the end they might invade and bring a bloody war upon this nation.

My lord, These treasons and traitorous and wicked practices of the prisoner at the bar, were and are to the apparent hazard of the public peace of this Commonwealth, and the state, and the parliament and people of England; and in contempt and violation of the laws of the land, and contrary to several acts of parliament in such cases made and provided.

My lord, There have been several Witnesses and Proofs of these particular Charges against the Prisoner: And, my lord, I do conceive that there hath been such proof made, that in your lordship's judgment he will appear to be guilty of all these particular actings. But, my

lord, I will not enter upon the proof, only make a summary relation of the beginning and continuance of this Plot and Design.

My lord, This Plot did begin very suddenly after it pleased God to take away the chief enemy of this nation. The king died in Jan. 1648, and this Plot began in February, the very next month following: And in the same month, my lord, the Scotch nation did proclaim Charles Stuart king of Scotland; and they did not stop there, but proclaimed him likewise king of England; and then, my lord, this Plot began here. For in the month of February, the next month after the king died, the meeting was at the Swin at Dowgate, where were several of the correspondents at that time; as Drake, Huntington, Titus, and others: And the end of that meeting was to contrive a way that they might agree the king and the Scottish nation; that was the end of their meeting at that time.

My lord, within a few days after that, they met again, all these several persons, at the White-Hart in Bread-street, and to the same purpose; and at length it was resolved to make their addresses to the queen, and to Percy and Jermin (first it was to the king himself) for a compliance between the king and the Scots: Letters were sent accordingly, and several meetings and several returns of messages were had of them. My lord, at length it was resolved, that they should send messengers to the king at Jersey, and agreed upon one Titus; and they raised money and gave it to Titus to undertake the journey. My lord, Titus accordingly went in the month of May, 1649, and returned in August following. After he had done his negotiation there, he returned to Calais: But being afraid this wicked Plot was discovered, by reason of letters that were intercepted, he durst not come into England; but sent letters to desire some correspondents might be sent to Calais. My lord, all this time I do not find that the proof discovers the prisoner at the bar to be any actor, or present at any meeting hitherto: But when these letters came from Titus, then the letters were brought to Mr. Love's house; which is the first time I find him by proof to be present. The letters were read in his house, and in his study, as some of the witnesses say that were there present; and it was then agreed, my lord, that Alford should go to Calais to Titus. My lord, accordingly he went, and there Titus did communicate unto him the affairs that passed at Jersey. Within four or five days after, Alford returns again; and where should the meeting be but at Mr. Love's house again, where Mr. Love and divers of the accomplices were in his house! A Letter from the king was read, the Diary, the Narrative from Titus likewise was read there; and there was the consultation what should be done, and what further course they should take to join the king and the Scots together. My lord, afterward they did agree that there should be some sent to treat with the king at Breda; the

Instructions were drawn in Mr. Love's house, (I think one witness says so), and Mr. Love present; money was raised, and Mr. Love himself did speak to one of the witnesses to raise money, which was Far: Far accordingly did bring in 5*l.* and laid it down upon Mr. Love's table, Mr. Love being present then in the room.

My lord, I shall not trouble you with the relation of more particulars; but, my lord, I conceive that Mr. Love doth upon these proofs stand guilty of endeavouring to promote the king to be king of England: For, my lord, what should be the end of uniting the king and the Scots together, after that the Scots had proclaimed Charles Stuart king of England, but that they might come in a warlike manner to invade this nation, and set up his authority as king among us?

My lord, I conceive I shall submit to your lordship's judgment, that he is guilty of intelligence from a professed enemy. The intelligence is, my lord, That divers letters were sent, and these letters were read in his presence, as himself doth confess he was at the reading of divers letters, and did not consent to them; and thereupon makes it as it were but misprision of treason. My lord, I conceive that this is apparently treason: For if letters were sent to one person, and did occasionally come into another man's hand, and he conceal them, being not sent to him, there peradventure it is but misprision of treason. But when there are sent to these particular persons letters from the king and Scots, and divers persons in hostility against the commonwealth of England; and received by the confederates in Master Love's house, and there were read and debated, though they did not agree to some particulars, yet they are actors: They are—in the very intelligence itself; and did likewise return several letters.

My lord, this intelligence was with the Scottish nation; which truly, my lord, I do conceive hardly an Englishman, that had the blood of an Englishman running in his veins, would join in confederacy with that nation, of all the nations of the world, against this Commonwealth; a nation that hath been known (and I am sure the prisoner at the bar is well read in the histories and stories of this nation) to have been a constant enemy to this nation in all ages through the memory of all histories; and, my lord, of late, not three years since, came and invaded this nation with a puissant army, which it pleased God to deliver us from: And this the prisoner could not be ignorant of, that we had lately a fight with them at Dunbar; that hostility could not be unknown unto the prisoner at the bar neither. And yet for all that, to confederate with a nation that were such constant enemies to us; my lord, I could not conceive it had been in the heart of an Englishman, much less in a minister and preacher of the gospel among us.

My lord, there are some particular charges upon him, more than upon any of the rest:

after Drake fled away, being doubtful that his secret traitorous plot would be discovered, Mr. Love supplied his room; all the meetings, and confederacies, and letters, and agitations in this business, were constantly at Mr. Love's house, himself being present: And, my lord, money, as I said before, by Mr. Love himself desired to be raised for the furthering of this design; and several sums of money were raised. I shall trouble your lordship with no further relation, but leave it to the proof that was made before your lordship and the Court.

Sir Thomas Witherington, the second Counsel for the Commonwealth.

Sir Tho. Witherington. My lord, Mr. Love's Defence which he made for himself, as he did it for his life, so he took a great deal of pains in it, and was very accurate in the Defence he made, especially in the Witnesses. My lord, I shall not take upon me (for it is not my charge at this time) to reply unto the whole Defence that Mr. Love made.

My lord, that I shall say shall be in two particulars, for Mr. Love divided that which he said into four parts; the first concerning the Charge; the second concerning the Witnesses and Testimony; the third concerning himself; and the fourth concerning some Proposals to the Court.

My lord, I shall only meddle with that which is concerning the Witnesses; and secondly, to some part of that he said concerning himself: I shall only reply as to these two, and the rest I shall leave to Mr. Attorney-General, that better knows what is for the advantage of the Commonwealth.

My lord, I shall begin concerning the Witnesses, to clear them (for now we are in our Reply for the Commonwealth). Mr. Love, who did profess a very great deal of ignorance in the laws of the land, yet he did insinuate something that implied some knowledge of them, in that, my lord, he took some exceptions to the witnesses. My lord, I take it, that the exceptions were:

1. That the Witnesses were not *probi testes* & *legales*. And,
2. That they were *Participes criminis*: And that indeed is included in the other.

My lord, first, I shall speak to this, that the witnesses produced against him, are *legales testes*: They are competent witnesses, and sufficient witnesses, without exception against him. I shall first speak to that they are *legales*: For Mr. Love did object, that they themselves confessed themselves to be guilty of the same crimes; and so their confession is upon the matter a conviction; and so they are convicted of the crimes in which they are witnesses against him: and so are not competent witnesses.

My lord, I shall clear this: Under favour I take it they are very clear and good witnesses, notwithstanding the exceptions. And, my lord, this I take to be a very plain case: the case which is in our common law: The case is

—which proves it fully : for if a man be accused of High Treason, indicted of High Treason, and will confess the indictment, and become an approver, yet he may be a witness against all those parties guilty of the same treasons with himself; he is *particeps criminis* with them and they with him : And yet this man thus becoming an approver, will at common law be a witness and a legal and good witness against them.

My lord, I shall a little open that, because it clears the case. My lord, an approver can only approve, it is true ; that is when a man is indicted of High Treason, and other his accomplices with him, and he upon the indictment says it is true ; and then desires he may have something assigned to him, and then he accuses such and such persons of the same crimes : In this case this man, after he hath confessed the indictment, and takes his corporal oath to reveal all treasons he knows in the indictment, (for he can accuse no further) after this done, he shall be a witness : he is a witness against those with whom he is *Particeps criminis* : Nay my lord, it is of merit and justice that he shall have this reward, he shall be pardoned his life. Now, that I prove to you, because that shews the reason that even the man, after indictment and confession, yet being an approver, shall be an accuser of his brethren, those that were *Particeps criminis* with him, and a good witness. And the reason of that goes to this case in hand : For although these men had a hand in the same plot and design with him, and have confessed, and did confess it upon evidence, that they were there present, and did many things ; yet I take it they are clear, competent, and good witnesses, and that is no objection against them, that they are *Particeps criminis*. My lord, if the law were otherwise, it were impossible to prove many offences ; for many offences cannot be proved but by some men that had a hand in them. In an ordinary case, an action of trespass and false imprisonment, if three men are guilty of it, it is an usual thing in courts of justice to admit one of them a witness. True, they are not parties in the action, and so may be witnesses : For those things may be so secretly done otherwise, that their treasons could never be revealed to recover against the Prisoner.

There is a case, I think, in all our knowledge : it is the case of the earl of Castlehaven.\* He was accused of a very grievous fact. The witnesses, which came against him, were one or two footmen, that were *particeps criminis* in the very same fact ; and these men, by the opinion of the judges, were competent witnesses. My lord, he was arraigned, indicted, and convicted, and suffered death ; nay, it is very true, that one of these persons was afterwards hanged for the same offence. So that, I think, under favour, as to that, I take it that they are clear and good witnesses, notwithstanding that objection.

The next objection is, That they were not *probi testes*. Truly, for that, my lord, I must appeal to your judgment in it, whether these men be not *probi testes*, et *honesti* too ; for, in case of an approver, as I mentioned before, that man that accuses his brethren upon the same treason, it is said, that of merit and justice the king ought to grant him his pardon ; for they that discover the traitors against the commonwealth, these certainly are *probi testes*, and good commonwealth's men. And so I take it, that this is no objection against them in that, but as before they were *legales testes*, so they are *probi testes*. My lord, I mention these things, to shew that the witnesses for the commonwealth are good and competent in this case.

The next objection touching these witnesses, is, That though they be admitted for good witnesses, yet there is not to any one fact two witnesses. There is not any one of the most criminal parts of the charge proved by two witnesses. And so as before they were incompetent, in regard of the quality and participancy of their crimes, so now he would make them incompetent for want of number.

My lord, I shall first agree to the ground of this objection ; for truly, my lord, I take it, that it is by the common and ancient law of England, that in cases of treason there must be two witnesses ; and it is by a law more ancient than that ; that is, by the law of God. But, my lord, it is true, the law of this land is explained by several statutes ; the statute of the 1st and 5th of Edw. 6, and the 2d of Philip and Mary. My lord, I take it upon all these statutes ; the one statute says, To accuse another, there must be two Witnesses : I take it, the Accuser and Witness are all one ; that is, the same that in one statute is called a witness, in another is called an accuser. But there must be two ; that is the objection. But then give me leave to consider this case, and to consider how these two witnesses shall be. My lord, I say, under favour, that in a case that consists of a complicated fact, that is, the reiteration of many actions, my lord, I conceive none of these laws are to be intended, that for every of the particular facts there should be two witnesses : that cannot be the intention of any of these laws, that in every particular fact, that is to say, whether Mr. Love was present at the reading of the letters ; if you have one witness to that, another for the writing of them, another to the sending of them ; though these three witnesses speak to several parts of the business, yet they are a concurrent testimony, for all agree to the fact. I well remember, my lord, a case in the Star Chamber, against B. of Leicestershire ; I think there was an information against him for bribery and extorting of fees. The matter came in the conclusion, that one man proved a bribe, and another man proved a bribe ; one proved a bribe of 40l. and another a bribe of 40l. ; but there were several witnesses to several bribes. The question now was, Whether he took bribes,

or no? And these tending to the same general charge, it was the opinion of all the judges, that he did extort and take bribes. The one witness spake to one bribe, and another to another; and in that case, as two witnesses made good a charge against an offender, yet in that case it was taken, that where witnesses, though they speak not in every particular, yet, all tending to the same general charge of bribery, these were taken for plural witnesses, and that was a good conviction. That was the opinion of the judges then. I mention this case only for an instance to express myself in this; for Mr. Love cannot expect, that to every particular thing laid to his charge two witnesses should be produced. But, my lord, when one witness proves, this thing he hath done, this letter hath he written, and another, that another thing he hath done, which all tend to the treason; now these are more witnesses, and two or three witnesses of the same thing, though not to the same individual thing, it is—So that upon the matter they are concurrent witnesses in this complicated fact, though not concurrent in this or that circumstance: for that is impossible almost in any action to be done.

But then Mr. Love did further enlarge this objection, which was out of a saying he had, That in case of treason, 'Probationes oportent esse luce clariores.' The proof must be as clear as the sun. Truly, my lord, it is very hard that works of darkness should need so much light for discovery, and that so clear a proof should be necessary when the things are done in darkness and secrecy. My lord, I think, under favour, though in this particular we have our witness, as I take it, to speak very plainly and clearly: for it is their own faults if they do not, for they were present at the meetings, at the consultations and debates: but yet I do observe, that in this case things were carried on in a very secret manner. For I do observe, first, at these meetings, all of them were done under a disguise, every thing acted in this business. I observe it upon evidence; first, That the very meetings themselves, they go under the title of Prayer and Fasting; for so Huntington told you, He was spoke to go to prayer at Mr. Love's house. The contributions made for raising of money, for sending of messages and dispatches, was under the disguise of charitable uses. So that here was a darkness all along. And then for the letters, there were no names subscribed to them: all were done without names, only the letter L. was upon one. And the place, truly I must say, that was obscure too; for what man would have thought that the place of meeting should have been at Mr. Love's house? a man that hath been so much for, and shewed so great an affection to the parliament, as he said himself in substance. A man would sooner have thought to have found this treason in any cellar in London, than in Mr. Love's house. For the Instructions, for the Directions and Dispatches, some were sent in table-books, written

in sack in a table-book: but, my lord, I am afraid, in the conclusion, the letters will be written in blood. But, my lord, this I do observe, that through these difficulties, though we passed through our evidence, yet your lordship heard how plain the proof was in most particulars. My lord, I shall say no more as to these witnesses, because the other part of answering the witnesses belongs to the Attorney General; for master Love went over all the particular Witnesses.

My lord, I shall only say one thing, and that is this, concerning Mr. Love himself; and it is only concerning this point. My lord, Mr. Love himself did say, He would be ingenuous so far as he took himself to be guilty. But, my lord, I know your lordship and the court observes that that ingenuity did follow the proof that was for the commonwealth. My lord, he confesses he was present at them; he was silent after all these meetings and debates: I mean the meetings after they began at his own house; for I speak not of them that were at Dowgate, for there is no proof that he was there. My lord, this he confesses; and this he says is misprision of treason. Truly, my lord, I must be bold to differ from him in that particular: I take it, that that he confesses is high-treason. I shall speak a little to misprision of treason, and so conclude.

My lord, Misprision of Treason is when a man hath notice of a thing that is treason, and he conceals it. Now, my lord, under favour, the concealment must not be long; it must not sleep long with him. My lord, I remember an axiom an Author hath in our law, and that is Bracton: He hath a discourse of Misprision of Treason; he hath it in Latin. Says he, "He that knows a Treason, he must not stay in one place a day and a night, but he must go on; he must go toward the magistrate. Nay" (says he) "though he have most urgent business, yet he must set it aside, and go on, and must not stay in any place till he hath revealed it. Nay" (he says further) "he ought not to look back till he hath given information to the magistrate." The man that doth not after this manner forthwith reveal it, this only is Misprision of Treason. But considering this case of Mr. Love's now confessing the fact, he takes it to be Misprision of Treason; but I take it to be treason itself. My lord, I shall observe what Mr. Love did: He was at these meetings; these meetings were continued for divers days and months. My lord, was there any discovery made by Mr. Love? Was there any revelation of his to any magistrate? Did he tell it to any man? Nay, did he confess it upon his examination, when examined? Nay, did he not deny it when he came to the bar before your lordship? Can this be said to be misprision of treason, that a man should hold so long in treason, and not reveal it? My lord, as every treason includes a misprision of treason in it; so I conclude that misprision of treason may grow up to treason itself. Now when a man shall so long sleep upon it, and be violent in it, and not reveal it,

I take this misprision of treason grows up into treason itself.

My lord, I shall say no more of that, but I shall conclude; because the other part lies upon Mr. Attorney-General, who is better able to do it. Only one thing I shall take notice of to your lordship, and I am troubled at it; and that is, That as he saith, that he that hath been so much for the parliament, with whom he hath gone along, and took sweet counsel together, and hath been active for, and passive with, through all the passages of the late wars; that he should suffer from them, this, he says, stuck very much upon him. But, my lord, for him that hath been so much for the parliament, so familiar with their proceedings, that hath been so active for them, and hath suffered so much for them; my lord, for him to kick the heel against the parliament; for him, after all this, now even in the infancy of this commonwealth, that this child should be destroyed, and by one with whom we have took sweet counsel together; and by one, I may say this, that though he had no hand in making this commonwealth, yet I dare say he had in the preparations to it; for himself all along hath gone with the parliament: So that, my lord, I take this to be an objection against him. But, my lord, I shall say no more in it, but refer the other part to Mr. Attorney-General.

Mr. Attorney-General, the third Counsel for the Commonwealth.

*Att. Gen.* My lord, I am sorry Mr. Love hath given me the occasion of this meeting, and of my speaking at present; I could much rather have wished to have been silent: But now I am drawn hither, I am forced to it. Mr. Love, my lord, in the beginning of his Trial, did desire God so to assist him, that he might go through it with gravity, meekness, and wisdom, as became a minister of the Gospel. I wish that God had heard his prayers, that he had so gone through it. What he hath done, the Court hath observed. My lord, in that part I have to do, I do heartily desire I might do it with faithfulness to you, and the duty of the place I ought to discharge, and to the Court.

My lord, the work that this day lies upon me, is to reply somewhat to what was said by Mr. Love in his own defence, and to make a faithful repetition to the Court, and to do the witnesses and the prisoner right; to repeat that, and that only, that hath been said; and in that, that I may do no wrong to mis-lead the Court, and offer nothing to the prejudice of the witnesses, nor to the prisoner. And truly, my lord, I shall not (in his own words) have any tortured collections, nor any inferences, nor strains of wit: He hath shewed his oratory in his Defence; my lord, I shall shew the simplicity of law in the Reply.

My lord, the Charge hath been repeated to you; and for that insisted upon by Mr. Love for the Witnesses and testimony, you have had answer: I shall not trouble you; there hath been pains taken in it. My lord, I think all

men were satisfied that it was clear enough; yet to make it more clear, Mr. Love, my lord, insisted upon one thing more, and that is upon point of time, and the point of the jurisdiction of the court, which (by your favour) I shall first begin with.

He stands charged, he says, for crimes done in 1648, 1649, 1650, and 1651. And those crimes, he says, were before this Court was, or had a being; and so had not power to take cognizance of them. That, my lord, I shall endeavour to clear to you, and I shink in much clearness; clearer than the light, as he will have his Evidence. He stands charged (I say) positively, my lord, with no crime before a law was emitted, that did give an inhibition, and was published and known. He stands charged with no crime before the law was published, that did declare what the crime was, and gave notice to beware.

My lord, that that was first, was the law that was made the 30th of January, 1648, that doth declare, (and upon that law I shall fetch the foundation and rise of this treason) That whosoever shall proclaim, declare, publish, or any way promote Charles Stuart, or any other person, to be king or chief magistrate of England or Ireland, without consent in parliament, shall be adjudged a traitor, and shall suffer pains of death as a traitor. Here was this law published, and notice given what every man should trust to, and, I may say, my lord, obedience expected. Against this law hath Mr. Love transgressed, and, under favour, in a very high measure; so that, my lord, I charge him upon this law, and since this law was made; and to this law there is no limitation of time for men to be questioned for it: And for this law, it is in express terms given in commission to this Court to take cognizance of it: so that, I think, this is a little clear to him.

My lord, the next is a law published in July, 1649, that is entitled, 'An Act declaring what Offences shall be Treason?' That, I think, he is not ignorant of, though he pretended to be ignorant of another. My lord, that law likewise, though it was before this Court was erected, yet this Court hath, by express words of the commission, power to take cognizance of it. And this Court, in these things, is not like other judicatories, that when offences are committed, the state takes care to appoint courts and judges to judge those offences. Let it be no offence to Mr. Love, if this Court were erected especially to try him. But the law was not made especially to punish him; for the law was made before, and the offence committed before; and so, I think, in all England the offences are committed before the Judges go their circuits, and have their commissions:—My lord, the next is the law that constitutes this Court, and says in what particulars this Court hath power to take notice of offences, besides those mentioned before, and the last concerning the Scots: That was but lately, which Mr. Love says he was ignorant of; but he was not ignorant to do somewhat against it.

My lord, these are the laws that Mr. Love is impeached upon.

The next thing that I have to do, is (and in that I humbly beg your favour, that as I am now to do justice, if I may so say, to the Court, and to be faithful to my trust, and the duty imposed upon me) to repeat the Evidence right unto you; and in that, as the gentleman, the Prisoner at the bar, hath had that favour from you to have a notary by him, to take all that was said of all parties; so, my lord, by your favour we have had some here to help our memories: with whom I have conferred; and by the help of their notes and our memories, my lord, we think we have faithfully transcribed that which was said by the witnesses. And, my lord, I humbly crave favour, as not now being a private examination to be read, but a public testimony in the presence of Mr. Love himself and the Court: I hope it is not private now, but I may use notes to do him right, and may read those things that they testified upon their oath here.

In the first place, my lord, I shall according to my best judgment do him no wrong. For the first, I shall acknowledge it was but a hearsay, and that from Drake, of letters sent from Scotland to the Presbyterian party in England, to let them know what had been done of proclaiming the king there, and that care should be taken for their interest. This I do acknowledge was but a hearsay; but that which followed not long after that time, my lord, was positive; and there, my lord, I shall begin the rise of this. And thus, as hath been observed by my fellows, that are counsel here, though there was not acting, nor presence, nor knowing, yet, my lord, under a second, it will appear he was consenting and approving, and so guilty of the first fact. My lord, there was a meeting at Dowgate: I suppose you remember it full well; it hath been several times repeated to you by several persons; and Titus the party now beyond the seas, and Drake, and other traitors fled, were prime sticklers for this, and moved others to come in, and to be there present, and hear what was the design. As I did crave your lordship's favour, so I shall, that I may not, as he says, trust to a sickle nor a roving memory, that I may be faithful, to read to you that I have taken, and what was said by them. I suppose Mr. Love hath by him one that can controul me, if I do not right.

I begin with this meeting at Dowgate, and continued at the White Hart in Bread-street: Alford gave you this evidence, "That one morning he was wished by Drake to go to the Swan at Dowgate: When he came there, there was one Titus who gave relation of the good disposition of the Prince, and how inclinable he was to take the Covenant, and to cast off the cavaliering party, and those about him, if there were opportunity found, how to make him know there was a considerable party in England that would stick close to the ends of the Covenant; and upon that, we that were there did think we were bound in duty, in relation to the Covenant,

to press the Prince to take it, and to prosecute the ends of it. And for that Titus said, if we would appoint another meeting, he would draw up something in way of application of the Presbyterian party to that purpose. We afterwards met at the Bear in Bread-street, and there he drew forth something he had framed to that purpose, and read it, and it was agreed to be sent over to the Prince; the substance of it was to press the Prince to apply himself to take the Covenant, and to prosecute the ends of it, and to cast off all the Cavaliers and that party about him, which had brought so much mischief to his father, and would do likewise to him: And this (I believe) was sent over, for Titus undertook to send it over. We asked him, how the prince could be made to believe that this coming from so inconsiderable a party as we were, should come under the notion of the Presbyterian party of England? He said he would undertake it by means of my lord Piercy." And, my lord, I think you do remember there was one Mason, servant of Piercy, that was sent over hither, so testified by some, to reconcile the royal and Presbyterian party. This Mason, my lord, was Piercy's servant, so testified here by divers. My lord, here is now the foundation: Drake is he that moves Alford; and Titus, I may suppose, the mover of Drake; and both of them fled as traitors. My lord, if they were traitors, and this is treason, then whoever had a hand in carrying on their design, himself is a traitor, and this action is treason. My lord, this is the testimony of Alford.

My lord, there is another Witness, and that is lieutenant colonel Bains, who I think was present only at this meeting, and had enough of it, and did leave it; and yet was present at this, and gave in evidence of what was there proposed. I think he was present at no other meeting, he was satisfied this was too much; his testimony, as I take it, was this, for I shall read it, that I may do no wrong to no party: Bains said, "It was also proposed by Titus, that something should be done, in order to restoring the Presbyterian interest, by application to the Prince, and to assure him, that he had a considerable party in England, which looked upon it as a duty, and lying upon all of them by the Covenant. And that it was necessary somewhat should be done by some parliament men, ministers, and citizens, that were leading active men, that he might have an assurance that somewhat would be done for him; and somewhat to the queen, Jermin and Piercy, whom he said were their friends." Thus, my lord, was that which Titus said at this meeting: and testified by Bains.

My lord, there is another, colonel Barton, who was produced as an evidence. My lord, I think that he spoke not much more than to this, and gave off here. My lord, his testimony was this; for I do conceive, under favour, we have taken the very precise words spoken by them; and, my lord, so as spoken and taken, so written, and so, my lord, read to you. Barton, my lord, said, "That Drake would have him to be

a messenger; and to that purpose there were several meetings at the Swan and White Hart." This was what Barton testified.

My lord, then there was major Huntington, which was at this meeting, and one more at Mr. Love's house, which he full well remembers. My lord, Huntington says this, that about March 1648, (in January was the law published) Alford told him that Titus was in town, and that he was newly come from beyond the seas from their friends, Massey, Bunce, Graves, and others; and that Titus was to meet the next day at Dowgate, where he fell into high praises of the Prince, and told them, that though he was taking unlandsome courses, yet they had great hopes his inclinations were otherwise. Titus said further, he feared his inclining to the Irish, unless something should be gotten from his friends here to divert him; that you remember was Mr. Love's charity too, as you will hear anon. Titus proposed to get letters from persons of honour, to persuade him to a good opinion of the Scots, to take the Covenant, and to join with them.

Afterward they met at the White-Hart in Bread-street, where Titus declared that he should gain these letters, and hoped to set something a-foot to the same effect; and there said, they were confident they could see no way under heaven for him else, but by taking the Covenant, and engaging the Scots against England: To which purpose he drew forth a paper, purporting that they were bound in honesty, conscience, and Obedience, to maintain and help him to his just rights, if he would go along and join with the covenanting party in England and Scotland.

My lord, this is that now that hath past in proof by Evidence concerning this first meeting at the Swan at Dowgate; which I do humbly conceive was the rise and foundation of what follows afterward. And this, my lord, if true, I suppose no man will say, but that was treason that was transacted there. I do not say, my lord, that Mr. Love was present at it, nor, as yet, can I say, knowing of it; but what follows after, my lord, will bring him in danger.

My lord, here, you have heard, was this meeting, and what was propounded to be done here, and how active Titus was, and that he was to go (you have heard by the testimony) to Piercy; and it is not doubted by any but he did go thither; it is not doubted by any but he was sent, and did go thither. To that purpose I shall now read you two witnesses more, which I have caused to be transcribed too, in the words as spoken by them, as I do conceive, that is, Adams and Far: that there was money agreed upon, to send Titus to Piercy; that there was money collected, and that they themselves did contribute. Adams he expresseth it thus: "that upon a meeting, the place and time I remember not, where I think were present Drake, Titus, Alford, and my self, and I cannot tell how many more; it was agreed that Titus should go to Piercy: the end of his going was to promote an agreement between the king

and the Scots, according to the Covenant (and, my lord, you shall hear in due time what that Covenant is, that Mr. Love hath said in his late Defence)." In order to his going, we did agree to furnish him with money for the present, and made some kind of promise to keep him while he was out: about 100*l.* was furnished; for my part, I paid 20*l.* of it." This is Adams.

The next is Far: he says, "He did understand by Drake, that Titus, who was here requested as one to be present at the treaty of Jersey, which Titus did undertake to go thither: he undertook to go himself. That after he was gone, Drake desired Far to let him have 10*l.*, saying Titus was in want, and upon this I lent him 10*l.*: the letter was read at Mr. Love's house when he came from Calais." So, my lord, here is now, under favour, his proof before you of this meeting at Dowgate, at the Swan there, finished in Bread-street, carried over unto Jersey, Titus the messenger furnished with money by a party from hence in this errand, as we told you. My lord, all this while I do not hear of Mr. Love; if he were, my lord, he was like the mole under ground; but however, my lord, Mr. Love hath carried himself (as some have said) like a rat among joint-stools, a man can see him, but cannot hit him. But, my lord, I doubt he will appear to be too busy in what follows, and that he had a hand in it at first.

My lord, the next to go on with is this, in time: That when Titus finished his work in Jersey, he was then to give an account to his masters that employed him, and upon his return he was to do it faithfully, as he thought. But being informed, that the state had vigilant eyes, and they discovered him what he had been doing there, and he having notice from some of his steadfast friends here of it, he thought it was not safe for him to come in person, so that his guilty conscience kept him off. But then he did desire that he might give an account by the hand of some others, by their memories; and for that purpose wrote a letter, to whom I cannot tell, I think to Drake: the letter was written, and under favour, my lord, this letter from Titus was read in Mr. Love's house, to have one sent to him; and there it was propounded for some to be sent. Adams was propounded for him to go; Far propounded for him to go; but not them, but Alford was agreed to go, and did accept of it; but not that he was there, my lord. My lord, for this I shall crave the same favour from you, to read Adams and Far, as to that particular. This is major Adams; "It was moved in Mr. Love's house, Mr. Love being there present, that I should go to Calais to meet Titus; but Alford going thither, did at his return give an account of the state of things at Mr. Love's house." My lord, that I read him for, is for that part, that it was moved in Mr. Love's chamber, Mr. Love being then present; "that I should go to Calais to meet Titus: it was moved, that Adams should go;" My lord, this I read to show Mr. Love

was privy to this before the messenger was sent. My lord, the next is captain Ralph Far: "I was in Mr. Love's house in his study, wherein" (in Mr. Love's study) "a letter was read from Titus, desiring one might be sent to him to Calais; and thereupon it was moved that I should go, but afterwards it was agreed that Alford should go, who went accordingly." That is now as to that particular, that before any man was sent unto Calais, it was made known in Mr. Love's house, and some propounded for to go, and at last another did go; this, my lord, I offer to you, as that which will not be controverted by Mr. Love, for I have read you two witnesses to it. The next, my lord, is, in which (I think) we do not differ; but that when Alford had been at Calais, and had taken the account that Titus gave him, the copy of the letter which he said was from the king to the presbyterian party here, the Narrative of all the transactions and proceedings to Jersey: that upon his return, I think we do not differ, nor is it denied; I am sure Mr. Love acknowledged it in his last defence, because proved by four, therefore confessed, my lord, that this Narrative, the copy of this letter was read in his house; and for that I have the testimony of Adams, Alford, Jaquel, and Far; which, if it be your pleasure I shall humbly read unto you.

The first is major John Alford: "Having received at Calais a Narrative in writing of Titus's transactions in Jersey, I brought the same to Drake, to whom it was directed." Now it appears to whom the direction was. "And he brought it to Mr. Love's house, where it was read; afterwards there was a commission so called." But, my lord, if you please, that is for this in the first place, That this narrative brought from Titus by Alford was read at Mr. Love's house.

The next is Adams; "But Alford going to Calais, did at his return give an account of the state of things at Mr. Love's house, which account was the Narrative from Titus, and the copy of the letter said to be the king's letter: The contents whereof I remember was as followeth; The king expressed a great deal of affection to the ministry in general in England, and promised them great favours, when he was in a condition, and desired them to continue stedfast in the way they were in; which letter was read and published in Mr. Love's study, and Mr. Love was there some times of the reading. At the same time a motion was made, of giving thanks to Titus for his well managing affairs there, and at the same time the Commission and Instructions were." So that here is another testimony, that this was done at Mr. Love's house; the Narrative, says this gentleman, and the copy of the king's letter.

My lord, the next I shall read unto you, is Mr. John Jaquel: "After Alford's coming home, I was at Mr. Love's house, where was Potter, Drake, and Alford; and Mr. Love was there some times, though divers times somebody came to speak with him, and called him,

and he went to speak with them. A Narrative from Titus was there read by Alford or Drake, wherein was declared the king's inclination to make peace with the Scots, but his wicked council hindered him. I think it was a Narrative of what had passed between the king and Titus at Jersey." This is that that Jaquel says.

The next, my lord, is Far. Alford being returned, he gave an account of his employment at Mr. Love's house; a copy of a letter was there read, from the king to the Presbyterian party in England: The substance was to send commissioners to the treaty at Breda. The Narrative brought from Titus was communicated at Mr. Love's house, where were present 10 or 12 persons. So, my lord, you have heard these four witnesses, what they have said concerning this: Now you shall give me leave to make application of this to the former, I shall crave your favour to go through this: There follows more at Mr. Love's house, this is not ended yet. My lord, after this, there was somewhat propounded to be done upon this Narrative and a Letter from the king; somewhat was propounded at the meeting: My lord, then there was, as I know the Court remembers, speech of a Commission that was somewhat controverted. There was speech of a Commission, and a Commission read: Mr. Love ingenuously acknowledgeth, and it was proved, and he declared his dissenting from it, and that he was against it, because as private persons they had no power to do any such thing. But, my lord, that there was a Commission read there, brought by Drake (I do not say that this proves that Mr. Love corrected it); that there were Instructions and Letters read for to be sent over, I think, is not denied; But, my lord, for that, if you please, I shall read you the witness. The first is Alford: "Afterwards there was a Commission, so called, agreed among us, sent over to the lord Willoughby of Parham, Massey, Graves, and Titus, at Breda, to advise with the Scotch commissioners there, in behalf of the Presbyterian party in England. This Commission was read in Mr. Love's study, and at the same time Instructions for the commissioners to walk by, were agreed on to be sent; which Commission and Instructions were by the substance of the Petition formerly sent, to press the king to take the Covenant, and to prosecute the ends of it." This Petition was (I conceive) what was formerly agreed upon at Dowgate; which Commission and Instructions one Mason, the lord Piercy's man, carried over. This is Alford's testimony as to this. And being asked by Mr. Love, "Did not I dissent from sending the Commission and Instructions?" he says this, "It was agreed in the general, that the Commission and Instructions should be sent, Mr. Love being then present." All present are principals, my lord.

My lord, in the next place is major Huntington's testimony; and the first is this, "That at Mr. Love's house in the beginning of March 1649, I found Drake and others, and



there was read a paper in the nature of a Commission, commissionating my lord Willoughby of Parham, Graves, Titus, Massey and Bunce, to treat in the behalf of the well affected party of England, and to join with the Scotch commissioners, according to such Instructions as should be therein inclosed. And this question being asked, what power have we to give or send such a Commission? Drake answered, We have the king's command for it, and the authority of some secluded parliament-men; for I look upon them beyond the power that is now sitting. Whereupon Mr. Love replied, Come, come, let it go." You have heard Huntington's testimony, and Mr. Love's paraphrase upon those words.

The next is Adams: "At the same time a Commission and Instructions were spoken of at Mr. Love's house to be drawn up and sent: As I remember, Mr. Gibbons brought the rough draught. I am very confident that Master Love was there some part of this time, and it was in his study where this was generally consented unto. The Instructions were there agreed also, and read by Drake as I remember. Sterks, the Scotch agent, met with us some times at master Love's house." This is what was testified by Adams. There is another to this, and that is capt. Far, "William Drake read there a paper of the nature of a Commission, which was not agreed to by the company, because private persons had no authority to give commission. The Commission was in the name of the Presbyterian party. A Letter and Instructions were then agreed upon; the commissioners were to be the lord Willoughby of Parham, Bunce, Massey and Titus, who were to move in the behalf of the Presbyterians. Papers then were read, to have been sent to the queen, to persuade the king to give satisfaction to the Scots; but they were not assented to."

My lord, I have done with this that concerns this Meeting; and now I shall apply that which I intended, and spoke of before. The design you heard, that, my lord, was at the Swail at Dowgate, was treasonable enough in conscience, high enough; and partly employed to agitate! And though we do not find Mr. Love to have been knowing or privy to it at first, yet, my lord, if there be a treason hatched and designed, a party sent in it, and any subsequent act of any other party that shall come into this, and approve of it, and join in it in what way soever, this man, my lord, is guilty of the first transaction of treason. So that though master Love did so walk under ground, that we cannot bring him in to be knowing at first, yet I bring him approving at last: and, my lord, though here be his first appearing, it is enough, and too timely. And, my lord, Titus departing, and an account given of all, and, for aught appears, not to be proved by me, nor by any for the commonwealth, whether master Love did approve or not, or how far he went in it. But he was present, and at the debates and discourings about it, and actings

in it. My lord, this is far from misprision of treason; for misprision of treason is a bare silent act that carries nothing of discourse nor debate with it; it is a simple act of omission. But when treasons are hatched and are acted, and others shall come and treat, and debate, and discourse upon carrying them on; my lord, by the subsequent act he hath approved of all that passed before, and made himself party to it. Here is an account given by Titus of what had passed there; this is brought into master Love's house, there are debates concerning a Commission; whether they took the king for the authority, or the king wrote of it, it doth not much move me. A copy of a letter from the king was read there, let them take it among themselves as they please. Here was a Commission debated, and master Love acknowledgeth he debated against it. My lord, under favour, if he had declared an utter dislike, and, as he himself says, a detestation and abomination against it; but he goes on, though not in that particular, yet in another, and he is guilty of all. In treason there are no accessaries, all present are principals.

The crime of treason is beyond the crying blood of murder; one is but private, the other is public: so as, my lord, though Mr. Love acknowledgeth, that he so far owned the Narrative from Titus, and the proceedings there, the reading of it, but did dissent from the Commission, and did speak against it, and at present I shall take it so too; yet for the Instructions sent, and for the Commission named, you have had four witnesses named to you. My lord, dissent will not serve his turn; and yet to that there is not a pretence of a dissent from the Instructions, and what was sent, and that is a consent and concurrence, and that is an approbation of all precedent actions, and makes himself a party in it, and that is by one witness: And, my lord, you have heard by master serjeant Witherington, that to every circumstance there needs not two witnesses, but to the design there must be two: And Adams himself says, it was propounded to have given Titus money, as you shall hear by and by; and Far tells you, that there was going on so far in it, that a paper was read for letters to be sent to the queen, to move her to persuade the king, but that was not assented to; but it was moved among them.

My lord, the next thing I shall take, as near as I can, was when this was done, and this transaction passed over, and the Instructions sent, that were agreed upon for Commissioners at Breda; then begins the troubles in Ireland. You have heard of a paper book sent, written in sack, and returned a year after; that comes next. There was sent over from col. Bamfield (Mr. Love says he knew not the face of the man) but he liked his employment, it seems, that would be privy to such proceeding from a man he knew not. There came a servant over, I take it from Bamfield, and that was about Christmas last, that is the time expressed

after Dunbar Fight. My lord, this was brought, the letter was delivered to Potter and their superscription was singly with the letter *L.* which I may say, may be better applied to master Love, than to any other, all circumstances considered; yet I shall not conclude from it; but though he says he had no letters directed to him, I shall say as truly, that they were directed to him, as much as to any man else, and a little more; for master Love was very unfortunate that these letters should be brought to him, read in his house, the transactions there, and Mr. Love to have no hand in it, this is hardly to be believed.

My lord, in the next place are these letters that came from Bamfield; if it please you, for that I shall read Potter. "I received letters out of Scotland from Bamfield, with the letter *L.* upon it, wherein was a large narrative of the affairs of Scotland, from Dunbar Fight, to the time of the date of them, which (I think) was about Christmas. I carried those letters to Mr. Love's, where was one or two more with us, Jaquel, and, I think, Dr. Drake; we three, I am sure of it. There were letters from a nameless person, whom we supposed to be master Bailey; and a letter from my lords of Argyle, Lothian, and Lowdon. These letters wrote for 10,000*l.* for buying of arms, and hiring of shipping; and for 5,000 men to be landed in England. These letters were disliked and dissented from; and it was agreed to give a negative answer: and we thought fit (for our own safety) to raise some money for the messenger and Bamfield: the sum agreed on was 40*l.* to which I contributed 10*l.* I carried the letter to Mr. Love's to take advice upon it. Mr. Love, and I, and Jaquel, read those letters that were opened, and those that were not opened, we did open and read, and discourse on them; and upon advice resolved to do nothing in it: neither did they reveal it." And then being demanded, Whether at Mr. Love's house there was not a discourse for raising 4 or 500*l.*? He answered, There was. Being demanded, whether letters were not returned to Bamfield, with the money sent him? He answered, "A letter was left at my shop, and I apprehended it came from master Love, or Mr. Drake." And Jaquel being demanded, whether Mr. Love and Mr. Drake were not appointed to draw up the letter? He answered, "Yes, they were." And that is Potter's testimony.

The next mention is, That Jaquel was present there, here is sure of it, master Love himself and Jaquel. This is Jaquel's testimony: "At a meeting at Mr. Love's house, master Love being present, it was thought fit that 40*l.* should be raised for Bamfield. A letter was read from Bamfield at master Love's house, master Love being present: Mr. Love declared, he never saw, or knew Bamfield. The letter was for 5,000*l.* to hire shipping. And another letter from my lords of Argyle, Lothian, and others, at the same time and place, were read, to induce the confederates to give credit to Bamfield. Potter moved, that 10*l.* might be

given to the messenger that brought the letter and 30*l.* to Bamfield; which was considered of, and nothing said against it: there was no agreement, but it was thought convenient by all then present." Upon this Mr. Love asked Mr. Jaquel a question, and he said, "I cannot say that Mr. Love said it was convenient, but it was not dissented from, or spoken against by any."

"My lord, I suppose this is a faithful Relation of what the witnesses said. My lord, you have heard of this, and the time when it was, that Bamfield's servant was sent, and letters brought from Scotland, giving an account of proceedings there: letters from Argyle, Lothian, Lowdon, and Belcarris, to give credit to what Bamfield should relate: money provided, though not the sum, nor the means those letters did hint to them; per-chance their purses could not reach that; but so far as they could go, they would: they would reward him that brought it, and him that sent it; and thereupon 40*l.* was provided, 10*l.* for the messenger, and 30*l.* for Bamfield. In this repetition I think I have not wronged Mr. Love.

The next is the Letter that came from Massey and Titus, who were then in Scotland; and in what condition, I think every man knows, in what condition they are there: though by the way I should be sorry to repeat that which Mr. Love did say the first day, That it did not appear to him, that the Scots were in arms against the parliament of England, but in arms for their own preservation: and therefore did desire counsel. Here was one of his reasons why he desired counsel to be informed, to advise him whether they were in arms for their own preservation, or in opposition to the parliament of England. This was that Mr. Love was leased to say the first day. My lord, this of Massey and Titus gives them account likewise of the affairs in Scotland after Dunbar fight too. If you please, my lord, I will read you three witnesses to that, and that neither doth Mr. Love deny, but that these letters were read at his house.

This is major John Alford's. "After Dunbar Fight we met at Mr. Love's house in his lower room, where a letter from Massey was read, which gave an account of the fight there; wherein he also wrote for arms, mentioning his own and Titus's necessities. Thereupon a proposition was made for raising of monies for the supplying of their necessities; and 500*l.* being propounded, it was brought down to two or 300*l.* to be raised among ourselves. Mr. Love did then move for contribution-money to that purpose: and I thereupon promised 10*l.* which my man paid." This, my lord, is the testimony which Alford gives as to this concerning Massey.

The next is Adams. "When the money was propounded to be raised for Massey and Titus, certainly Mr. Love was then present;" [and this after the Fight at Dunbar] "and the money was agreed to be raised by those that were privy to the correspondency. Mr. Love

had then a paper in his hand, and did write something, I saw not what he did write; and so every man that was there did write what he would lend; I conceive Mr. Love summed up every man's sum. Massey's letter was for arms, and the money propounded was for Titus and Massey; for Titus, because he was sent by us; and Mr. Love was there." This, my lord, is Adams's testimony; and though he did not know what Mr. Love writ, yet he knew what Mr. Love moved.

My lord, here is another, and that is captain Far, which I shall make bold to read to the Court likewise, concerning the same action "After Dunbar Fight, I came somewhat late to a meeting at Mr. Love's house, where Mr. Love told me a letter was come from Massey, to assist the king with money and arms; but it was not agreed that any money or arms could be sent. And I understood from Mr. Love, they could not do it. Mr. Love then likewise told me, they agreed to raise a sum of money for Titus, Massey and Graves, to be sent to relieve them in their necessity: which sum, whether it was 250*l.* or 300*l.* I cannot positively say; but Mr. Love moved me to contribute. I told him I would give him 5*l.* which I brought wrapped up in a paper, and laid it down on Mr. Love's table, Mr. Love and several others being in the room; it was so done, that there might be no discovery." And Mr. Love asking him some questions upon this, whether it was done so by Mr. Love, or no? He did not know that; but it was done so by himself, that there might be no discovery. My lord, Mr. Love did not disagree: Far being cross-examined by Mr. Love, did not say, that Mr. Love did disagree to the sending the money to Massey and Titus. So I have done with that particular likewise, the receiving letters from Massey, and of the account from Scotland, and the fight there.

That which Adams saith, Mr. Love having replied unto it, concerning a letter writ to the general assembly and Kirk of Scotland; and in that, my lord, he is pretty positive. Adams's testimony is; "There was a Letter written to the General Assembly and Kirk of Scotland, at Mr. Love's house, Mr. Love was sometimes present at this meeting: which letter was taken to be penned by Mr. Love and Mr. Drake; and I thought it to be so, because of the language of it: and that after Drake escaped, all the meetings I know of, were at his house," [and so, my lord, say some others.] Being examined, he says, "I saw letters which were read in Mr. Love's house; Mr. Love was present and privy to the debating of them, and did not declare any dissent."

My lord, I have now done with these particulars; you have seen Mr. Love at the end, though you found him not at the beginning: it is not good to come at the ending of the quarrel. But, my lord, under favour, by the laws and rules of justice, if any ill thing be contrived and plotted, and afterwards any other person shall come into the contrivance of it,

and carry it on; my lord, I think I shall not need to say much in it; but he is culpable and guilty of the whole, from the first to last. And that Mr. Love should be but a mere spectator, a mere concealed person, it is very hard to be believed by any that are rational men: for after that once Titus had done his errand at Jersey, and gives his account here, my lord, that his transactions, and the subsequent employment, all that we know of, are all transacted, and carried on in Mr. Love's house, in Mr. Love's study, in Mr. Love's presence: it was not one or two, or three times, which had been enough, and very well had it been for Mr. Love, if he had done as Baines did, or as Barton did; they, when they heard (though they were too much for them, my lord, to conceal, as they have done, yet did confess it when required) they left off when they heard of it, they would go no further in it, they knew the danger of it. Mr. Love, my lord, as you will hear anon, by what himself hath proposed, what judgment and conscience led him to carry on this; it was a conscience of his own covenanting interest and principles for the Scots and religion, that led him on to carry on this design.

My lord, I have done with this, that is, the Evidence against him; for application to it, you have heard the several Laws read before the Charge opened: That man is guilty of High-Treason, and is a Traitor by the laws of the land now, that doth any way promote, declare, or publish Charles Stuart to be king of England. My lord, you have heard the Evidence, what Titus hath plotted, what Drake hath carried on, what Mr. Love hath approved of, and how far he hath consented and joined in the design. My lord, I shall say it again, if Titus and Drake be traitors, as their own guilty consciences have made themselves judge themselves so: he that flies, confesseth the fact; my lord, they are fled. My lord, if they be traitors, Mr. Love must be the same with them; for Mr. Love was carrying and hath agreed, and concurred, and approved of carrying on the design that Titus and Drake have acted: consenters and agents are to have the same punishments; in reason there are no necessities. My lord, he next point is this; the next act is that of the 17th of January 1649. Having given you the evidence, you will give me leave now shortly to repeat the law. The first is, for promoting, Charles Stuart, &c. That if any person shall maliciously and advisedly plot, contrive and endeavour to stir up, or raise forces against this present parliament, and for the subversion of the same, and shall declare it by any open deed, &c.

My Lord, Mr. Love is pleased to express himself, That none can accuse him, nor none have sworn against him, that he hath raised any seditions, any insurrection, any rebellions; my lord, I cannot say it fully, whether he be guilty of that, or no: but this I will say (the Judgment I shall leave to the Court upon the

Evidence heard) if Mr. Love be guilty of any thing moving or tending towards the raising of forces, seditions or rebellions; though the thing be not done, yet, my lord, it is treason; those practices, those purposes are treason by the law, though they never came to act. We shall not look, I hope, to see a rebellion raised before we shall say it is treason, and endeavour against it; but for that, how far he is guilty upon the evidence of being instrumental of the war in Scotland, and to have endeavoured to have a party got in England, my lord, I shall leave it to your judgment, upon the evidence you have heard.

My Lord, there is likewise another in the same law: If any person procure, invite, agree, aid, or assist any foreigner or stranger to invade England or Ireland, or adhere to any forces raised by the enemies of the parliament or commonwealth, or keepers of the liberties of England; this is high treason. For this, you have heard the evidence what Mr. Love hath done towards this; still upon the same foot of account it is treason, though but proposed and intended, though not acted. Then there is another clause upon the law that Mr. Love hath insisted upon, of constituting this court. But for those former I have said, and you shall give me leave to repeat it again, that these laws offended against, though in time before this court was constituted, yet this court hath, in express words, commission and authority given them by the parliament, to take cognizance of all facts and offences done after that law, though done before your commission; and that, my lord, is not to be doubted to be a very good and legal authority. And yet for this the law that constitutes this court, of the 26th of March 1650, that no person after the 29th of March 1650, shall give or hold any intelligence by letters, messages, or otherwise, with Charles Stuart, James Stuart, or the late queen their mother, or the council abiding with any of them, prejudicial to the commonwealth; or with any that shall be in arms against the parliament of England, or shall bring or send in England, Ireland, or any dominions of this commonwealth, letters, messages or instructions, tending to raise insurrections, or a new war within this nation, and shall not forthwith reveal the same to the Speaker of the Parliament, or to the Council of State, or two members thereof, or to two justices of peace, shall be guilty of, &c. That is a clause in the law that constitutes this court. And no person shall voluntarily relieve any person in arms, or that shall be in arms against the parliament, with any money, victuals, or ammunition on pain of death, or other corporal punishment. And whosoever shall voluntarily take up arms against the parliament, and shall encourage others to do so, shall die without mercy.

These, my lords, are clauses contained in the Act that constitutes this Court; and I read the law before the Charge: and now, my lord, I have repeated the Evidence faithfully, now let it be considered how far the evidence goes with

them. There are three acts of Parliament, I suppose Mr. Love knew not of the next; for he says, he knew not of that of the 2nd of August; but it was published solemnly at the Exchange, and at Westminster-hall: but ignorance cannot excuse him; that no man will pretend. This, my lord, is in relation to Scotland; it was made in August. The battle at Dunbar, I cannot well tell whether it was in September or October; in September this correspondence from Bamfield, Argyle, Lowdon, and Lothian, Belcarris, Massey, and the rest, were all since Dunbar Fight; that is clear, they were since that time: the words of the law are these; 'Whoever, after the 5th of August, shall use, hold or maintain any correspondence or intelligence with any of the Scottish nation residing in Scotland, without licence from the parliament, or with any other person or persons of the Scottish or any other nation, whom they know to adhere to the Scottish nation against the parliament; or shall abet, assist, countenance, or encourage the Scottish nation, or any other person adhering to them in their war against the parliament and commonwealth of England, or shall send, or cause to be sent and conveyed any money, horse, arms, ammunition, or any other furniture of plate, goods, merchandize, or any supply whatsoever, to the Scots, or to any port or place thereof, or in their power, or in confederacy against this nation, these facts are high treason by this law.' And the High Court of Justice is to take cognizance of the contents by express provision of that law:

My lord, I shall not need to repeat the Evidence again; but upon these, my lord, I must leave him to your justice and judgment to do what in your consciences you think is just upon these laws, and what Mr. Love hath done in transgression against them.

My lord, Mr. Love was pleased, at the beginning of his Trial, to make some deep Protestations; I think he did move all honest men that heard him: and truly I did think, and did hope that they were not made with any relation to equivocation, or mental reservation, but to a positive denial of any facts of treason, or looking that way; that it had been made in that sense, that he had been clearly not guilty of any thing. But, my lord, having looked upon them, and caused them to be transcribed to me, I do find that they are somewhat cautious, and perchance they may be true, my lord, in the sense spoken by Mr. Love; but whether true in the sense they should have been spoken by a Christian in a public assembly, that I shall not judge. His first Protestation was, in the presence of God and this Assembly, 'That I never wrote any letter to the king, or to the church, nor to the queen, or church and state of Scotland in general, or to any particular person of the Scotch nation, since the war began to this very day.' My lord, this may be true; but whether any letter hath been sent from the king, or from the Scottish nation, or others, or by Massey, or

the rest, that shall be believed as the evidence is.

*Mr. Love.* It is in my second Protestation.

*Att. Gen.* 'Again,' saith he, 'I do likewise declare in the presence of the same God, I never received letter written to me from the king, or from the queen his mother, or from the church or state of Scotland in general, or any particular person of the Scottish nation since the war began. I protest and declare likewise in the presence of the same God, I never collected, gave or lent penny of money either to send into Scotland, or any foreign parts, either to the king of Scots, or to the queen his mother, or to the church or state of Scotland in general, or to any particular person of the Scottish nation, since the wars began.' But that Mr. Love did not move others to contribute, we have not a word of that. Truly, I did think it when he spoke it? But it seems these asseverations were studied to evade, and that he would speak true, but not the whole truth. I have given them but a touch; these may be true, my lord, but, under favour, there is something else that is as true, and goes almost as near as this.

My lord, Mr. Love the last day had your patience and justice to make a large Defence, and he was very large in it; and though he did beat us down that are the counsel for the public, that we should not use oratory, nor flourishes, nor quorks of law, nor niceties, in which I shall be guided by him; and shall not do it; yet he is pleased fully to make use of all insinuations to the Court to trip up every Witness upon niceties, upon not-expression, upon nonsense, and such, my lord, which I shall not follow him in: for I shall deal as truth ought to deal, in pure nakedness and simplicity, and not use any oratory, but to set the matter of fact before you, and leave it unto the Court, who are the judges between the commonwealth and himself for life and death. But, my lord, you shall give me leave to touch upon some few things in the late Defence of his; it was divided into four parts. The first, the Charge; the second, the Witnesses and Testimony, both in one: The Witnesses for the Persons, the Testimony for the Fact. The third, concerning himself; the fourth, some Proposals to the Court: which truly, my lord, might better have been termed rather Threatenings than Proposals.

My lord, for the Charge, you have heard it hath been gone through, and the Evidence concerning it. Concerning the Witnesses, my lord, I have read unto you (for I do take it upon my conscience) what I knew, and nothing but what was true: I have not varied, that I know of, a syllable; and I think I ought not to do it; the duty of my place requires it not from me.

My lord, concerning himself, he is pleased to say something, and much of his merit: But, my lord, it is a grief to this Court, to myself, and all that are well-wishers to the public, that any man that hath been a friend to the Parlia-

ment, that hath gone along with them, acted for them, suffered for them, done as he hath done, that this man should be called to public justice: I hope, my lord, all that hear me bear witness, that I think, my lord, we are all sensible of it.

But, my lord, look upon who hath been the cause of it; let that be looked into, and every man will be satisfied in his own judgment and conscience, whether Mr. Love were provoked, or no, or whether he hath not provoked the state to bring him to be thus exemplary in justice. Mr. Love says, my lord, (I shall desire to make use of the Paper) "I confess it is not so much the danger of my life; I am a sickly man, and I know a disease will ere-long kill me, whatsoever you do with me: But this grieves me more, That I should suffer from your hands, for whom I have done and suffered so much in my obscure station, and according to my weak measure. Had I been so dealt with at Oxford, at the Junco there! But to be so dealt withal in Westminster-hall, this troubles me." And, my lord, it doth trouble me to deal so with him. My lord, whether may we or himself take up this complaint? Had the state been thus used by a Cavalier, by a professed open enemy, it had not been so much trouble to us; you would have come to justice upon a little more desire than now: But that Mr. Love, a minister, a minister of the gospel, a man that hath preached for us, prayed for us, acted with us, gone along with us; that he should go to undermine us, that he should be joined, or in confederacy with others to undermine the state, where he did live peaceably and quietly, where none interrupted him: He had a free liberty, as much as a king in this commonwealth: Truly, that Mr. Love should do this, it is (I think) an aggravation; and not an aggravation upon the Court or State, that they should prosecute where a man is prosecuting them. What he hath done, my lord, you have heard; what his offences have been, and who gave the cause; That a minister should do this; one that had a calling elsewhere, and better to employ himself, than to meddle with states and secular affairs: And these things to be done in Mr. Love's house, and in his study, where he should have been studying better things. My lord, next he says, "I could not leave such relations as I have, nor such a loving people and competent living, as any minister hath within London, only conscience carried me another way; and till conscience be satisfied, I cannot stir one jot." My lord, this his conscience, I do not know what it hath to do in government, or what Mr. Love's conscience had to do in these affairs. He had a calling of his own to use; and should I go out of my calling, and meddle with other men, I humbly conceive I were a busy-body. Mr. Love had a calling enough for any one man to employ himself in; and, methinks, when he says he had such a relation to a loving people, a competency of livelihood, that he should not apply himself to return to them, but to wander

abroad : And when we once wander, it is hard coming in again, till perchance we are fetched in again with the whip. But, my lord, Mr. Love had other relations, of wife and children, which he might have looked upon also, and taken care of them.

In the last place, he is pleased to say, (and that I believe hath carried on his design) "The Covenant-Interest." You have heard what Titus did, what Drake did, and what the rest did ; that all this, it was upon the Covenant ; and the Covenant is urged, I am sure, to things the Parliament hath forbid. Mr. Love is pleased to declare himself still to retain his old principles, from which, by the grace of God, he will not be taken off by any terror. My lord, you will hear by and by what the Covenant he supposes leads him to : And, my lord, I shall take it asunder, and bring it next, if you please, that is the Covenant-Interest. Says Mr. Love, "Though I own not the way of managing any Papers, I neither writ them, nor sent them, yet thus far I own the thing ; I confess it was agreeable to my judgment and conscience, and I thought the interest of Godliness would be more promoted, if the king went into Scotland upon Covenant-Terms ; it would be more for the good of the nation."

Love. No, Sir, those are not my words : I said, "Than to fall in with the Irish rebels, or to offer this kingdom to the Spaniard." I thought a greater foundation of trouble would be laid, if this reception were not laid by that nation. And the Covenant hath a clause in it, That we are to seek the good and union of both nations ; and they are judged to be incendiaries and malignants that not only divide the king from his people but the kingdoms one from another. Now they declaring him to be their king, according to my apprehension, I thought it agreeable to my Covenant to pray and desire, as a private man, and no more, that there might be an agreement upon those terms, consisting with religion and the terms of the Covenant.

*Att. Gen.* But had you gone on as a private man, Mr. Love, we had not stirred you now. My lord, this is plain of itself what interest this Covenant interest is, "Till the king and the people in the two nations, &c." Truly my lord, Mr. Love is pleased to express himself somewhat obliquely against the present government : He saith, my lord, "When I look upon all the Vows, Covenants, Declarations, Protestations, of both houses of parliament, I find a suitability between my judgment and them, and am not conscious to myself of any thing I have done in opposition or contradiction thereto : I repent not of whatsoever I have done ; though I could wish the ends of that just war had been better accomplished : Then should we have been happy, and united among ourselves, and honoured among the nations round about us. I am so far from repenting of what I have done, both by doing, and contributing, and suffering in the parliament's quarrel, that were it to be done again upon the same unquestionable au-

thority, for the same declared ends, and against the same malignant persons, I should manifest as much readiness of mind to engage, according to my measure."

After this where he had mentioned his troubles at Oxford, when a scholar there ; and at London, when he came to be a lecturer here ; at Newcastle, when he spake for the parliament there ; and in Kent when he spake against the king there ; when these were over, after this he had a little breathing, whilst the two houses of parliament were in power. This gentleman was troubled in the time of the king, in the time of the bishops, in the time of these wars, for being for the parliament : But I appeal to his own conscience and judgment, whether ever he was troubled or disturbed by this parliament or by this government of the commonwealth, whether he had not as free and as full liberty to preach the gospel, to instruct others, and to save souls, as his heart could wish ; and I desire to know whether ever the parliament did interpose with him, till he did interpose with us. He went out of his way, my lord : He was quiet and safe, in as much security as any of us ; and, my lord, even those that were watchmen for the safety of this commonwealth, did watch and take as much care even for his preservation, as for any one of ours : And thus he hath requited them. My lord, I will repeat it : I appeal to his own conscience, and to any of his friends here, whether ever, till his judgment and conscience did interpose in state affairs, to dispose of kingdoms and commonwealths, whether ever he were in the least interrupted.

My lord, he says himself, when he came to be a lecturer in London, the bishop would not admit of him in three years ; yet my lord, he is admitted here three years, and none hath interrupted him. And yourself say, you have a competent livelihood, and a people very loving to you ; and you might have so continued it you would.

My lord, his proposals to the Court, I do say, were hardly fair Proposals ; for they had a little of threatening in them : "For" (says he) "if you censure rather upon a political interest, than of the merit of the fact, the Scripture counts it not justice, but murder." Truly, my lord, I think justice is a political interest, the preservation of the general. But surely I do not think the person will come in judgment before you, but the merit of his fact, and as yet I may say, I suppose the treasons he hath committed, if those find him guilty, if the Court finds him guilty of those facts laid to his charge, and if you are satisfied in your judgments that they are proved, my lord, it is justice, not murder ; and it is justice that which political interest requires of you, that justice be done upon the prisoner. And he is pleased to say in his last Defence, That he demed the Commission to be sent, and enrolling the Presbyterian party to it : and he hath acknowledged it had been very high presumption if they should have done it, and a notorious falsehood. And in that I join with him ; and whether he hath not done so,

my lord, that I shall leave to you. That the Presbyterian name was made use of, you have had many concurrent evidences; and Mr. Love was present when these things were mentioned: And if it be a fault, which himself hath acknowledged, it is right done to the Presbyterian party, who, I am sure, will not own him in it.

My lord, but a word more: This last day he was pleased to mention his Sermon; \* which made me a little to enquire after it: It was preached at Uxbridge, (my lord, I had the honour to be at the Treaty) which hath been so much spoken of; and truly I wonder this gentleman did not remember what he said then. If you please, my lord, I shall put you in mind of some Passages: I have the Sermon here.

[Mr. Attorney-General reads out of the Book, which he said was Mr. Love's Sermon.]

"I have ever thought that too much mercy towards Malignants hath made more Delinquents † than ever justice hath done. Mercy should not weigh down justice;" (my lord, these are good instructions.) "In God they are both equal, why should it not be so in man? Pity to the bad, hath proved cruelty to the good: The sparing of offenders hath made many worse, few or none better." (And, my lord, we know it.) "To them that have shewed no mercy, let judgment be shewed without mercy. Much guilt contracted; much innocent blood spilt, which either must be avenged on us, or by us." My lord, that is one of his clauses; and here is another. "2. The Lord heals a land by cutting off those distempered members that endanger the health of a land." (Here is word of censure, my lord.) "It was the Lord that troubled Achan, and cut him off, because he troubled Israel. Oh, that in this our state-physicians would resemble God, to cut off those from the land, who have distempered it;" (I suppose he meant, or shall do.) That, my lord, was his opinion then. "And those who lie under the guilt of much innocent blood are not meet persons to be at peace with, till all the guilt of blood be expiated either by the sword of the law, or the law of the sword; and a peace can never be safe nor just till then." What Mr. Love hath endeavoured since, my lord, I shall say nothing. And I have but one word more, and it is this; my lord, he says it is not likely to have a peace with such men as these, the Malignant party, while they continue thus. "We can as soon make fire and water agree, yea, I had almost said Heaven and Hell, as their spirits and ours; for either they must grow better or we worse, before we can agree." My lord, I think there is little hope of their growing better; and, my lord, we have not grown worse. My lord, I shall trouble you no further: I shall use nothing of aggravation; but as justice is blinded, so let the Evidence

appear to you in pure nakedness. My lord, you have heard the Evidence (as I humbly conceive) in the same language, in the same habit, in the same words, as spoken by the Witnesses: And, my lord, having heard those, and the laws, and the Charge against him, upon the whole I shall humbly leave him to stand or fall by your justice and judgment.

Love. My lord, I humbly crave leave to speak but one word: Mr. Attorney-General hath replied to my Defence, as to the Matter of Fact. Concerning his Reply I shall not insist upon it; yet I shall humbly crave leave to insist upon two Particulars.

Att. Gen. If I have given any new Evidence, Mr. Love ought to be heard: But, my lord, I have declined it. And for those Passages in his Sermon, I do not urge one word of Evidence against him; and for the rest, they are his own words, which he hath said the last day; and I have brought nothing new before you. And if the Sermon preached at Uxbridge should be an occasion, I shall cast it aside.

Love. I humbly conceive there are new suggestions expressed in Court by those worthy gentlemen, whose names I know not, nor their employments neither. But as to those I shall humbly crave leave in a word or two; and then, as to the whole matter of the Depositions, I shall humbly offer some matter of law, arising upon the whole matter given in.

Att. Gen. I shall crave leave too, my lord, and leave it to you: For any suggestions, they are but suggestions, as Mr. Love says himself; and that is nothing for the evidence. Mr. Love, my lord, had the last day, and I should have this. Had he said he had any thing to say, or if he had had any thing more, he might have said it; I did wait if he would have said any thing: But, my lord, then the whole was closed, and no new evidence. I did not answer all the suggestions of Mr. Love the last day: his evidence and depositions will conclude the Court, that it is not suggestions and insinuations; the Court are above these. When the evidence is closed for the Commonwealth, let it be concluded there: If they offer any new evidence, Mr. Love may have liberty to answer.

Love. Though I dare not tax Mr. Attorney-General for discharging his duty in his place; yet for the preservation of my own life, I must not be wanting to myself, if your lordship and the Court will give leave; and that is humbly to beseech your lordship to take notice that Mr. Attorney-General, in the relation of the matter of fact in the Depositions, is pleased to raise the correspondence, as he is pleased to call it, as high as Jersey; and so makes me to be *particeps criminis*, that I should be judged by you upon the whole matter. Now Alford upon oath did declare, That Drake and Titus held correspondence; and that the ministers knew nothing of it.

Att. Gen. I do not say you did.

Love. Therefore I beseech you I may not be judged upon that matter: and then I beseech your lordship to observe that Mr. Attor-

\* Clar. Hist. vol. 2. p. 445.

† For what Clarendon, Oldmixon and Hume say of these appellations, see the notes to vol. 3, pp. 21, 111, 257.

ney General is pleased to say he would not insist upon inferences, nor strains of wit; but truly I have discerned both.

*Lord President.* You totally err from the way you ought to walk in, and take upon you to judge others. The Court will consider whether he hath offered any thing of not: We have notaries, and so have you. You spent the last day only in making comments and collections; yet that you might have some liberty of discourse, we sat here patiently two hours; and did hear that which we ought not, nor you ought to have spoken. And now you are entering the same way of Inferences and Collections, as though we did not sit here to take notice of what was done, but we must receive the last word from you and your comment. If you had new matter the last time, you might have been heard: We expected you would have brought new witnesses; but they were in the same crime with yourself; and you would rather betray yourself than them, and God and the truth than them. But we will be as careful of any comments as you yourself can be. And I think that we have so much piety and charity, that we sit here with as good affections of justice and piety, as are in your own breast. This book was not given as evidence against you: and all that is in your comments, we shall understand it.

*Love.* My lord, I have only one motion: I have some matters in law to offer to your lordship, to consider by way of Exception to the Charge, and also to the Depositions of the Witnesses. I have a Paper that I humbly desire might be read in Court as Matter in Law, arising from the Charge, and from the Depositions of the Witnesses.

*Att. Gen.* Why did you not this before?

*Love.* I am ignorant of the customs of the Court.

*Lord President.* I believe you have wronged your own breast in many things you have said; and you have said you have been ignorant in many things that you have known very well: It is not good to dally. You will be ignorant at one time, and at another time more knowing than others.

*Love.* I beseech your lordship, it is a new suggestion of the Attorney General, That concealment of treason for a tract of time is treason.

*Lord President.* There is no new words of suggestion: If Mr. Attorney hath not spoken it, nor read it according to the truth, we will examine it.

*Love.* He hath done it with disadvantage to me.

*Lord President.* If we have, he shall not do it with disadvantage to us; for we will be as indifferent as your own breast: Therefore be not you a commentator of that. We understand so well as God enlightens; for whether he hath done it with advantage or disadvantage, that is our part to consider.

*Love.* I desire to have Counsel upon this Matter of Law arising from the Evidence, That

concealment of Treason, by your acts, suppose it be for continuance or tract of time, yet by the law it is not Treason. And my Counsel informs me, That the Act of the 26th of March, that constitutes this Court, gave you power to inquire into Treason, but could not take cognizance of Misprision of Treason till there was a subsequent Act. Therefore I desire this favour, That seeing it is so much suggested in Court, and seeing the Witnesses none can prove a personal act of mine, to bring me under your law, as to treason, I desire my Counsel to clear this, That Concealment of Treason, though for never so long a tract of time, is not Treason by the law of the land.

*Att. Gen.* I will out Mr. Love of that scruple: He is not charged for Misprision of Treason, though I could have done it; but that I insist upon, is flat Treason. It is true, sir Thomas Witherington was pleased to express it in the way of argument, That concealment of Treason long, comes to be Treason: But here are acts, and I insist upon the Evidence; and the Court will judge, for they have heard the Evidence.

*Love.* I beseech your lordship, that the Paper might be read, the exceptions that I have against the Indictment, and the matters of law arising from the evidence.

*Att. Gen.* My lord, truly I profess, I hope I am not in my nature cruel, that I should do injury to Mr. Love: but, my lord, I cannot favour him, to do injury to the law of the nation. My lord, he hath one by him that hath taken every word of the Charge.

*Love.* I did plead upon your lordship's promise that I should have a fair and indifferent hearing; and if Matter of Law did arise from Matter of Fact, which could not, you said, be known till the Witnesses were deposed, I had your lordship's promise, and I think the Court's, that I should have counsel to plead to Matter of Law.

*Att. Gen.* My lord, I think here is no legislative power in this Court to change laws. My lord, I appeal to all here, whether the Evidence we gave were not closed upon Saturday, and all the Depositions; whether Mr. Love did not take care and pains to make his own Defence, as to Matter of Fact, and spent so many hours on Wednesday last. My lord, he had all before that; if he had Matter of Law, it was more proper to move then: but when he hath gone so far, and we have closed all, do but consider the consequence, that when this is done, and all the evidences heard, then to come with Matter of Law.

*Lord President.* Mr. Love, that you have said hitherto, is nothing but of the same nature of that you said the last day; and the Court will take it into consideration, and judge of it: but if you have any thing in your Paper that is so included upon the Evidence; for I tell you the Evidence was ended the last day, and your Reply; and if you had any thing, you should have offered it the last day. Here hath been nothing new offered concerning you, but as it is



usual for the counsel for the State to state the Matter of Fact to the Court; for they have the last word: but you had fully ended before; and shall we go out of the way for you, more than for a whole generation which the law runs unto? I do not know how to do it: you had this Paper in your pocket; you might have pulled it out; and you have had time in a nearer degree to it; yet the Court is willing, if you can out of your Paper, by advice of counsel, shortly read what you insist upon for Matter of Law, they will hear it, if such exceptions are not of your own, but by the advice of counsel.

[Mr. Love gives in his Exceptions.]

EXCEPTIONS taken by Christopher Love, clerk, to the Charge of High Treason, and other High Crimes and Offences, exhibited to the High Court of Justice against him by Edmond Prideaux, Esq.; Attorney General for the Commonwealth of England.

[These Exceptions are not here printed, for that they come in more properly afterwards; being again in substance given into the Court, and signed by Mr. Love's Counsel, and the Substance of them then debated in Court by Mr. Hale, a Counsel for Mr. Love.]

*Att. Gen.* My lord, you have now some fruits of the notary. By the law of England, he that is impeached of High-Treason, is not to have the copy of the Indictment: it is said the Court are judges for the prisoner, and counsel for him. To you all things be substantially charged. That there is a substantial Charge, the Evidence makes out. But this precedent being admitted, and the former of Lilburne's cited, I shall have little encouragement to go on with any charge of Indictments.

*Id. President.* Though it be more than the law permits, yet the Court will take consideration of it.

*Att. Gen.* He did read his papers; I think it is more than ever was heard of in any court in the world. But to take his papers in by your clerk; I hope this is no Replication to the Charge: I hope he answers not that way; then we shall dispute that way again. If he gives papers, I may; and, as ambassadors, treat by papers.

*Id. President.* Mr. Love, we have gone out of our way for you; and whatever hath been suggested by the counsel this day is nothing, unless they had offered new matter; and they have offered none; and therefore it is against any law that was ever yet practised in England. You were concluded before, though haply the neglecting of it might have been a prejudice to you: yet you have offered a Paper, which the Court will take as a Paper to consider of.

[The Court adjourns into the Painted Chamber: and upon their return, the Lord President speaks.]

*Lord President.* Mr. Love, our long absence

upon this account may seem to you and others, that we have had something of great difficulty among us, which we have considered of. That which hath been upon your Papers last offered, in which you have set down the parts of the Charge, and the statutes, and your Exceptions; these we have considered of. But to these, though you do affirm it here to us, that it is by advice of your counsel, yet it is not under your counsel's hand, nor your own, which in order it should be. We have considered of them; and our examining of them hath taken up a great deal of this time we have been absent. We find that there may haply be some mistakes in your Notes: therefore it is resolved, though there seem not much difficulty to us, yet you shall have counsel, thus doing, That they shall set it down under their hands, what Matter of Law they will argue to, and bring it under their hands, upon Tuesday next at eight o'clock, to this place, or to the Painted Chamber.

*Love.* Shall the Counsel have only bare liberty, or will the Court assign them me?

*Lord President.* If you desire it, and name them, they shall be assigned you.

*Love.* I desire Mr. Maynard, Mr. Hale, Mr. Waller, and Mr. Archer.

[The Clerk was called upon to read the Order.]

*Clerk.* "Friday, the 27th of June, 1651. Ordered by the High Court of Justice, That if the Prisoner's Counsel shall under their hands assign any Matters of Law, fit to be argued and presented to this Court, on Tuesday next at eight o'clock in the morning, this Court will take the same into further consideration."

*Love.* I would know whether they are assigned to plead here in Court, or to bring a Paper under their hands.

*Lord President.* If they will, under their hands, set down what they will stand to for law, it shall be considered, and they shall plead.

*Love.* I humbly thank your lordship's favour, and the favour of the Court.

[Mr. Love is commanded away. The Court adjourns.]

*The Fifth Day's Proceedings, July the 1st, 1651.*

These Exceptions following, signed by Mr. Love's Counsel, were delivered this morning by Mr. Love's Solicitor into the Court, sitting in the Painted Chamber.

EXCEPTIONS to the Charge of High-Treason, and other High Crimes and Offences, exhibited to the High Court of Justice, by Edmond Prideaux, esq. Attorney-General for the Commonwealth of England, against Christopher Love, clerk; and Matter of Law, humbly presented to the said High Court, according to the Direction of an Order hereunto annexed. [For this Order, see above.]

First, The Charge is, "That Christopher Love, as a false traitor and enemy to the com-

monwealth of England, and out of a traitorous and wicked design to stir up a new and bloody war, and to raise insurrections, sedition, and rebellion within this nation in several days and times, that is to say, in the years of our Lord God 1648, 1649, 1650, 1651, at London, and in divers other places within this Commonwealth of England, and elsewhere, together with William Drake, and divers other persons, did traitorously combine, confederate, and consplot together, to stir and raise forces against the present government of this nation, since the same hath been settled in a commonwealth and free state, without a king and house of lords, and for the subversion and alteration of the same."

The Act of the 17th of July, 1649, is, "That if any person shall maliciously or advisedly plot, contrive, or endeavour to raise forces against the present government, or for the subversion or alteration of the same, and shall declare the same by open deed, that every such offence shall be Treason."

*Exception 1.* The words 'Maliciously' or 'Advisedly' are left out of the Charge.

2. That the words of the Act are omitted, which are, "Plot, Contrive, or Endeavour." 3. It is not Treason within the Act to plot, contrive, or endeavour to stir up or raise forces against the present government, or for the subversion or alteration of the same, unless the same be declared by some open deed. But the Charge is, "That Christopher Love did combine, confederate, and consplot to stir and raise up forces against the present government, &c." And it is not charged that he the said Christopher Love did declare the same by any open deed.

Secondly, Whereas the said Christopher Love is by the said Articles charged, "That for the subversion and alteration of the same, and to carry on the said traitorous Design, that he did traitorously and maliciously declare, publish, and promote the eldest son of the late king to be king of England, (meaning this Commonwealth) without the consent of the people in parliament first had, and signified by Authority or Ordinance to that purpose."

The Act of the 30th of January, 1648, is "That no person do presume to proclaim, publish, or any way promote Charles Stuart, son of the late king Charles, commonly called the prince of Wales, or any other person, to be king or chief magistrate of England, by colour of inheritance, succession, election, or any other claim whatsoever."

*Exception.* It is not expressly charged that the same was done after the said Act made; neither doth the Charge pursue the words or intent of the Act.

Thirdly, The Charge is, "That to accomplish the said traitorous and wicked Design, the said Christopher Love, on several days and times in the years aforesaid, at London, &c. together with William Drake and other per-

sons, did traitorously and maliciously invite, aid, and assist the Scots, being strangers, to invade this commonwealth of England, and hath adhered to the forces of the enemies, raised against the parliament."

The Act of the 17th of July, 1649, is, "That if any person shall procure, invite, aid or assist any foreigners or strangers to invade England or Ireland, or shall adhere to any forces raised by the enemies of the parliament or commonwealth, or keepers of the liberties of England, every such offence shall be taken to be Treason."

*Exception 1.* That it is not alledged in his Charge who in particular were the strangers that were invited to invade England. 2. That it is not alledged that at the times of the Invitation, Aid and assistance, laid in the charge, the Scots were strangers. 3. That it is not alledged particularly in the Charge, to the forces of what enemies, raised against the parliament, Christopher Love did adhere. 4. It chargeth the Prisoner for a treasonable assistance in some years that were before the said Act of the 17th of July, 1649, was made. 5. To advance the said traitorous and wicked Design, is uncertain to what Design it shall have reference, several charges of treason being before expressed.

Fourthly, The Charge is, "That Christopher Love, divers days and times between the 29th of March, 1650, and the first day of June, 1651, at London, &c. did traitorously and maliciously give, hold, use, and maintain correspondency and intelligence by letters, messages, instructions, or otherwise, prejudicial to this commonwealth, with Charles Stuart, son of the late king, with the late queen his mother, and with Henry Jermin, Henry Percy, and divers other persons, being of counsel, and abiding with Charles Stuart."

By the Act of the 26th of March, 1650, the Matters charged herein are only prohibited, but are not made Treason.

*Exception 1.* That this Charge is mislaid, being charged to be done traitorously. 2. The Charge is uncertain, being alledged in the disjunctive, 'or otherwise,' and shews not in what other manner.

Fifthly, The Charge is, "That Christopher Love, within the times and at the places aforesaid, did traitorously and maliciously use, hold and maintain correspondency and intelligence with divers persons of the Scottish nation; that is to say, with the earl of Argyle, and others of the Scottish nation, and with divers other persons of other nations, whom Christopher Love well knew to adhere to the said Scottish nation in the war against the parliament."

The Act, of the 2d of August, 1650, is, "That all and every person that shall use, hold or maintain any correspondency or intelligence with any person or persons of the Scottish nation, residing in Scotland, without the licence of the Parliament, the Council of State, or the Lord General; or with any person or persons.

of the Scottish, or any other nation, whom they shall know to adhere to the Scottish nation in this war against the parliament.

*Exception 1.* That it is not laid, that the persons of the Scottish nation mentioned in the Charge were residing in Scotland, nor expressly alledged that they did adhere. 2. That it is not averred, that such correspondence was holden without the licence of Parliament, Council of State, or the Lord General, nor in what war the correspondence or intelligence was held. 3. It is not laid, with what particular persons of any other nation adhering to the Scottish nation, correspondence or intelligence was holden, nor of what nations. 4. This correspondence and intelligence is not laid to be after the 5th of August 1650, mentioned in the said act of the 2d of August 1650, but refers to a time preceding that act.

Sixtly, The Charge is, "That Christopher Love, within the times and at the places before-mentioned, did traitorously and maliciously abet, assist, countenance and encourage both the Scottish nation, and divers other persons adhering to them in this war against the parliament: And did send and convey, or cause to be sent and conveyed, moneys, arms, and ammunition, and other supplies to Scotland and other places, and to the said Titus, &c. in confederacy against this nation, without licence of the parliament of England, or Council of State, or General of the Army."

The Act of the 2d of August, 1650, is, "That no person that shall abet, assist, countenance or encourage the Scottish nation, or any other person or persons adhering to them in their war against the parliament and commonwealth of England; or shall go or send, or cause to be sent, &c. any money, horse, arms, ammunition, or other supplies into Scotland, &c. or to any person under their power, or in confederacy with them against this nation, without the licence of the parliament of England, Council of State appointed by their authority, and of the captain-general of the parliament's forces as aforesaid."

*Exception 1.* That there are no particular persons named, who were abetted, assisted, countenanced, or encouraged, neither of the Scottish nation, nor of any other persons adhering to them. 2. In the Charge, the sending of money, &c. is not laid to be done without the licence of the parliament of England, or of the Council of State, or General of the Army. The words of the act are, "Without the licence of the parliament of England, or Council of State appointed by their authority, or of the captain-general of the parliament's forces." 3. The time to which this refers, is between the 29th of March 1650, and the 1st of June 1651; and so it takes in the time between the 29th of March 1650, and the 2nd of August 1650, which is before the making of the act.

Seventhly, The Charge is, "That the said Christopher Love, at the times and places before-mentioned, did traitorously and voluntarily

relieve the said Syllas Titus, and one Sterke, a Scotclman, which then were and yet are, under the power of the Scottish nation, and in arms against the parliament of England, with moneys, arms and ammunition.

By the Act of the 26th of March 1650, the Matters charged herein are only prohibited, but not made Treason.

*Exception 1.* That this Charge is mislaid, being charged to be done traitorously. 2. It is laid to be at the times before mentioned, whereas there are several times before mentioned: so as it is uncertain to which of those times this Charge relates. 3. And of these times, sundry of them are laid to be in several years before the making of the Act upon which this Charge is grounded.

ALLEGATIONS by Christopher Love, touching the Matters and Proof upon the Charge.

Though I do not conceive any sufficient Proof is made of the Charges against me, yet I shall be ready to make it appear upon proof: That one of the principal Witnesses hath deposed against me upon promise of reward, and upon menace of punishment. That one hath received extraordinary rewards for his deposing. That divers of the Witnesses against me have been by their own confession detected of contributing of Supplies and Assistance, sending and receiving letters contrary to the late acts. That no two lawful Witnesses produced prove any one Treasonable Act. That no Witness doth depose farther than Concealment, or Misprision of Treason at the most.

CHRISTOPHER LOVE.

As this Case is stated, we conceive these Questions may arise:

1. Whether in this Case there be lawful and sufficient Witnesses, as by law is required? 2. Whether here be two lawful Witnesses? 3. Whether any Concealment of Treason be Treason within the late acts? We have not seen any authentical Copies of the Charge or Evidence; but upon the Copies we have seen, we humbly conceive fit to tender these Matters and Exceptions to the consideration of this High Court. And we shall be ready to speak to them, or any of them, or to any other Matters arising upon the Case, as we shall receive further directions.

MATTHEW HALE.

JOHN ARCHER.

THOMAS WALLER.

After the Court had received the precedent Exceptions, and were sat in Westminster-Hall, Mr. Love was commanded to the bar.

When Mr. Love appeared at the bar, he desired the Court that his Counsel might be heard to these Exceptions. And when Mr. Archer and Mr. Waller, who were of his Counsel, appeared in Court, the Court demanded of them, whether they were of Mr. Love's Counsel? they answered, they did understand they were assigned to be of his Counsel by the Court. Then the Attorney-General demanded of them,

whether or no they had subscribed the Engagement? they answered, they had not done it; and spake further to this purpose, That they were by the Court assigned to be of Mr. Love's counsel, and were sent for into the Court, and in obedience thereunto they had appeared, and were ready to speak, if they might be heard. It was demanded of them by the Court, whether or no they would subscribe the Engagement? They answered, That they desired time to consider of it; and so withdrew.

After they had withdrawn, Mr. Love moved the Court that Mr. Hale, another of his counsel, might be sent for.

[Upon the coming in of Mr. Hale, the Lord President said;]

*Ld. Pres.* You come as counsel for Mr. Love; the gentlemen that were here, are brought into an incapacity of doing him service that way; we asked them whether they have engaged: we doubt not you, but tell you the reason why we did it.

*Mr. Hale.* My lord, I have done it.

*Ld. Pres.* Therefore you are assigned.

*Mr. Hale.* I had very late notice of this business, it was Saturday night late before I had notice of it, and the next day was not a day to think of those things. Yesterday was Monday, and the most part of that day I spent in looking over those things that had been, I think, presented to your lordship and the Court; we did not know what command your lordship would put upon us, whether you would admit us to speak, and to what you would admit us to speak, and when you would admit us to speak. It is impossible, my lord, I must deal plainly, I profess it is impossible for me, in a business of this great consequence, to undertake to speak any thing for the present, till such time as I know your lordship's directions: and this was that we acquainted this gentleman with, as soon as ever I saw him, and the first time that ever I saw him, which was but this day.

*Att. Gen.* I think that Mr. Hale hath put somewhat under his hand.

*Mr. Hale.* We have done so.

*Att. Gen.* Nay, you must stand single, the other two are set aside, it must be you only; I suppose Mr. Hale knows what he is to speak to.

*Mr. Hale.* Truly we know what we are to speak to; but to speak upon such a business on such a sudden, when we did not know what directions the Court would give, that I could not undertake, and I think Mr. Attorney-General will not press it upon us, it were a hard case if he should.

*Att. Gen.* Mr. Hale knows as well as any man what is to be done in these cases, none better than himself; the Court useth not to assign counsel to pick flaws, but those that are just Exceptions: and the Court is doubtful too, how they will allow counsel to debate them, and stand to the Judgment of the Court. I suppose he comes to speak to that that the party hath alledged.

*Mr. Hale.* It is true, we do so: but Mr. Attorney-General knows likewise, that when matters of law are assigned, that there is some reasonable time, we expect not long, but some reasonable time is assigned also for the parties to prepare themselves; for truly otherwise I should not do that duty I owe to the Court and my client, if I should speak *ex improviso*, in such a manner as I have done; for the first time I saw any thing of it, was on Saturday night, between eight and nine o'clock.

*Ld. Pres.* Though that was the first sight of this Paper, as it is now set down, it was not the first notice you had to be of his counsel, but himself hath declared it here long ago, that the former paper was by your advice.

*Mr. Hale.* No, my lord, if he did so, I will plead Not Guilty.

*Ld. Pres.* I will not say your name, but when he gave us in his Paper before this, the last day, you said it was the advice of your Counsel.

*Mr. Love.* Not Mr. Hale.

*Ld. Pres.* Then haply we shall ease you a great deal: that that is under your hand, is very short, and we shall ease you of some of that too; and you know that upon all assignments in the Upper Bench and Common Law, when they first open it, they shew some causes upon which they will argue it; and when you have had time already, now shew something that may be worthy of it, and we will consider of it.

*Att. Gen.* Before he speak, my lord, I desire that he will give it under his hand positively, not queries, but positive, that this in his Judgment he thinks fit to be Matter of Law, and to be argued.

*Mr. Hale.* My lord, we think that these things are such.

*Ld. Pres.* Then you must upon the first sight open it so far, that it may be your judgment.

*Att. Gen.* But not suffer it to be debated unless you think it doubtful.

*Mr. Hale.* We are here assigned counsel for him, and if your lordship will please to give us that time that may be convenient for us to do our duty for him; if not, we shall do but your lordship wrong, and our client wrong, if we should speak.

*Ld. Pres.* You may have some convenient time, but you must open it now, that we may judge what time is proportionable; if you will not open it, that this is the point you will argue upon, we can say nothing.

*Mr. Hale.* Then the reading of that which we have exhibited to the Court, will be as much as possibly I shall be able to do at this time, for we have had no copy of the Charge.

*Ld. Pres.* Nor must have.

*Mr. Hale.* And we have taken a copy at random, according as it hath been offered to us by those that have taken Notes, and we have presented upon those notes, and we have applied ourselves to Mr. Attorney for a copy of the Charge, and he conceived that it was not

fit for him to do it without direction of the Court; but for a copy of the Charge, when Exceptions are taken, it is usual to have it granted: and for us to speak and spend your lordship's time upon matters that are contained in a Charge, whereof, for my own part, I never heard, and which is usual upon Exceptions offered to be granted, it would be very—

*Ld. Pres.* It is an excellent thing to speak to men of understanding: Did you ever know an Indictment in this nature, a copy of it delivered upon the Prisoner's prayer?

*Mr. Hale.* Yes, I have known it very often.

*Ld. Pres.* He shall, as his memory serves him, speak to the substance; but to have a Copy of the Charge, I take it, you have no known.

*Mr. Hale.* Thus far I have known it. I have been commanded to be of Counsel with persons that have been impeached of Treason by the Parliament; I know that the archbishop of Canterbury, when he was impeached of Treason, had a copy of his Charge, that I know he had; I know this is the usual course, that if a person takes Exceptions to a matter contained in an Indictment, though it is true he shall not have the copy of the whole Indictment, yet he shall have a copy of so much whereupon his Exception grows; that hath been done, and will not be denied: but for the other matter, I know that in the archbishop of Canterbury's case there was a copy of the whole Charge granted, and the like was done in the case of the lord Strafford.

*Att. Gen.* I shall give that Answer a little more than I did: Parliamentary proceedings are no rule for other courts to walk by; besides my lord, you sit here upon a known published law, and the offence charged is against those laws. I believe Mr. Hale well remembers that both my lord of Strafford's Case, and the archbishop of Canterbury's Case, were both of them for many several facts several times a long time committed; which several facts being judged by parliament, were judged to be Treason not against any settled positive law: And for Strafford's case you know how the judgment at last was given by act of parliament, king, lords, and commons. And for the archbishop of Canterbury's Case, you know what the several complaints against him were, many of them not treason, but so many of them together, that in parliament they thought fit to judge him guilty of treason; but those privileges are not to be paralleled, he knows very well it was not against such and such a law, to make those offences treason. Having given thus much favour, I may say to the prisoner, that he may by memory exhibit his Exceptions, he hath done it; if you judge that those Exceptions are worth the debating, be worthy of it, you may (as Mr. Hale saith) give directions for so much to be given him, otherwise (for my part) I did never give it unto any; but those that have been in my place before, did never give it but by immediate warrant from the king, or the parliament now, but for so much as the court

thinks fit, for so much as concerns the exceptions.

*Sir Tho. Witherington.* For that that Mr. Hale objects to the Indictment, it stands with a great deal of justice; for if a prisoner lays hold of part of an Indictment, and says there is a mistake in it, there is reason it should be so, because the court must judge it whether it be so or not, therefore there is necessity of it that there should be a copy of so much; but I think he never knew that all the indictment was, but that part, and that is of necessity for the court, that they may see whether the exceptions accord with the indictment or no: If there be any exceptions to an indictment, if that exception remains not as a doubt or question, there shall be no copy of so much of the indictment given. If he shall raise a doubt that there is any doubt in law, or any question and variance between the acts and the charge, if he shall raise any such doubt, then I think according to the old law he may have that part of the Charge; but we desire he may raise some doubt to the Court.

*Mr. Hale.* My lord, we have raised the doubts, and we are ready to deliver in those that we conceive to be Exceptions to the Charge; if we be over-ruled in them, we have no more to say: but if your lordship, upon the view of these things we have offered, think them worthy to be spoken to before your lordship, then surely that is agreeable with that very rule which the Counsel of the State is pleased to state; that is, that in case we allege that which the court shall think fit for us to debate before them, that then we may have that whereby it may appear whether we debate upon that which is, or is not.

*Att. Gen.* Mr. Hale saith he hath given them in, but I have seen none of them, my lord.

*Ld. President.* Whether their memory be perfect or imperfect, that we shall help you withal; and then I will tell you what you were best do, for time goes away: we will, before you take it, take the several statutes and the Charge, and your Exceptions, and compare them all together before you, and you shall expect to every one as you go.

*Att. Gen.* I desire the Exceptions may stand as they are.

*Ld. President.* Ay, but we shall see whether there be any material variance between the Notary and the Charge.

*Att. Gen.* That notary was upon favour too, Mr. Love will acknowledge it.

*Mr. Love.* I do with all thankfulness acknowledge it, my lord.

*Att. Gen.* I desire it may be no precedent for after-times.

*The Clerk.* If you please, read your Exceptions.

*Mr. Hale.* My lord, we begin with the first, and these are the Exceptions: We take it, that the Charge is grounded upon the Act of the 17th of July 1649, and we take some Exceptions to that first part of the Charge; that is, concerning what offences shall be adjudged Treason.

*Ld. President.* Read your Exceptions, and then you shall hear the Charge.

*Mr. Hale.* Our Exceptions are these; first, That whereas the words of the Act are, "That if any person shall maliciously and advisedly plot, contrive, or endeavour to stir up, or raise forces against the present government, or for the subversion or alteration of it;" that the words "maliciously" or "advisedly" are left out of the Charge, which we conceive are material words.

*Att. Gen.* Read.

*The Clerk.* "That he the said Christopher Love, as a false traitor and enemy to this commonwealth and free state of England, and out of a traitorous and wicked design to stir up a new and bloody war, and to raise insurrections, seditions, and rebellions within this nation, did several days and times in the several years of our Lord 1648, 1649, 1650, 1651, at London, and in divers other places within this commonwealth of England, and elsewhere; together with William Drake, late of London, mercer, Henry Jenyns, late of London, esq., Henry Price, late of London, esq., Richard Graves, late of London, esq., Edward Massey, late of London, esq., John Gibbon, late of London, gentleman, &c. and other their complices yet unknown, did traitorously and maliciously combine and confederate themselves together, and plot, contrive, and endeavour"

*Att. Gen.* What say you, Mr. Hale?

*Mr. Hale.* Now we find that the inconvenience is, of coming to put in our exceptions when we have not a clear copy of the Charge; and that was the cause why we did subjoin this, that in case any mistake arise by mistake of the copies, that we may amend: it is true, we find 'maliciously' is in.

*Att. Gen.* Traitorously will be enough.

*Mr. Hale.* I think not. That is over: for if it be maliciously alledged, that is over. Then the next thing we except to, is "he traitorously combined, confederated, and conspired together": it is true, there is 'Plot' in it, but there wants the words 'contrive' and 'endeavour'; but that is not the principal matter we stand upon.

*The Clerk.* They are in.

*Mr. Hale.* Even that is answered too. The next Exception that we take to the Charge, is, That the Act upon which this part of the Charge is grounded, says, that he must manifest it by an Overt-act, by an open deed: now we say, there is (as we conceive) nothing charged upon him in pursuance of this act, that is, there is no overt or open deed laid in the Charge; for the words of the Act are so. "That if any man shall maliciously plot, contrive, and endeavour to stir up, or raise forces against the present government, and shall declare the same by open deed, that then every such offence shall be treason"

*Att. Gen.* If Mr. Hale hath read the copy of the Charge as it was taken, I think he finds divers of them in the Charge of open acts.

*Mr. Hale.* The business is not, whether there be open deeds, but whether they are applied to this act, or be substantive charges of themselves.

*Att. Gen.* I would ask him whether that open act must be in the indictment, or in the evidence?

*Mr. Hale.* In the indictment: it must be expressly laid in the indictment, or else it is no good indictment.

*Att. Gen.* But for that, that we may not dispute upon those things, my lord, there are the several charges against the several acts; there are several open acts that are laid in the indictment, and (I think) if he look upon it, he will find that they are laid to every one of them, and relate and refer to every one of them.

*Sir Tho. Witherington.* There is writing of letters, contributing of money, and receiving of messages.

*Mr. Hale.* That will appear by the subsequent parts of the Charge.

*Ld. President.* The subsequent parts of the Charge will make that appear, for if he did lend money, &c. if they be really there, we shall hear it by and by.

*Mr. Hale.* I take it, that the law is very plain, that the act must be mention'd in the indictment.

*Att. Gen.* But we will not debate that when we are express in the thing; we are not so tied to form, as to pin them to every word of it.

*The Clerk.* "And further to carry on and accomplish the said wicked practice and design, he the said Christopher Love, divers days and times between the 29th of March 1650, and the 1st of June in the year of our Lord 1651, at London, and other places as aforesaid, did traitorously and maliciously give, hold, use and maintain correspondence and intelligence by letters, messages, instructions, and otherwise."

*Ld. Pres.* These are open acts.

*Mr. Hale.* Then favour us in this: we take it that between this, and the first Charge, there comes a particular Charge that relates to Charles Stuart, that is intervenient between the first Charge and this that is now read, or else we are misinformed by the prisoner; and if there be so, then we think our Exceptions will take place.

*Sir Tho. Witherington.* It is all contained in one indictment, and then that explains the Overt-act follows afterwards, as a distinct thing in the indictment; and so it was in my lord Cobham's Case in that indictment, and in my lord of Essex's Case.

*Ld. Pres.* He may make overtures.

*Mr. Hale.* We confess it; but we suppose it very certain, that both as this act is penned, and as the act of — is penned, which are much at one as to the manner of penning them, there is of necessity an overt-act to be laid, to make good that general charge: that, we conceive, will be plain; and that is admitted and agreed by the lord Coke in his Collections

of the Pleas of the Crown, fol. 12, 13, where he saith, "The Indictment of the earl of Somerset, in the time of Edward 6, and all other of the like form, were against law:"\* Because he said, that he did not follow the Words of the Act, and that he did it *per apertum factum*, and shews not what the open deed was; that was not a good Indictment; for the fact must be set forth in the Indictment; that must be done. Then the question is, Whether this be so done here or no? We conceive by this charge it is not done here, upon this ground; we say, there follows after this a particular charge concerning his promotion of Charles Stuart: and then subsequent to that, there follows this that the court hath now read. We say, that in this case here is not a charge of an overt-act, neither by the one nor by the other; there is not a charge by the former, because that is a distinct treason, made distinctly treasonable by another act: and therefore that which is made a distinct charge of treason by another act, shall not be an overt-act within the former; that is one thing we say. And another thing we say is this, That in this case, the second, that is that which the court hath been pleased to direct to be read to us concerning his holding correspondence, that shall not be an overt-act relating to the first charge: for it is an uncertain relation: for there be two designs mentioned before, the one is a design contained in the first charge, the other a design contained in the second charge, for the promoting of Charles Stuart; and we say, the third shall not be coupled up to the former, because it is a distinct charge of treason in itself, and because it is uncertain to which it relates: for it refers not more to the first charge than to the second concerning the promoting of Charles Stuart, that is called the Prince of Wales.

*Id. Pies.* For this I take it for the present, that the charge is founded upon four statutes; if he lay the offence against the first, second, third, and fourth, and he shall come and conclude it without relation to any particular of these treasons, he did thus and thus by letters and correspondencies, that will relate to them every one, though it comes but in the conclusion; and though the statutes be various, yet the indictment is but one, and he may put in this of the overtures in one place sufficiently, to be a sufficient overture to every one: and therefore though to one of them there should be no overture in it all, but *valet ut valere potest*, it will hang upon so much, as it will bear an Overt-act, and then you will not deny but that those words are overtures.

*Mr. Hale.* It is true, they are so; but yet still we conceive this third, which we call the third charge, that is concerning holding correspondence, the third or fourth, I cannot tell which it is, but it is one of them; we say, that that is not an overt-act applied to the first charge. When we come

to the substance of that charge as it stands by itself, then our exceptions will rise upon it, as it stands singly by itself; but we conceive that shall not be a supplemental charge to make good that first charge, that is concerning endeavouring to subvert the state as it stands established, it shall not be used as an overt-act to make good the first charge. When we come to that particular charge, that is concerning the maintaining of correspondence, whether it be a good substantive charge of itself, then we shall offer our exceptions to that; but in the mean while we are but upon debate of the first, whether the first containeth such a charge, as by the act of the 17th of July, 1649, is required.

*Att. Gen.* My lord, we are heard before you concerning it; Mr. Hale will find, that after all these laws are repeated, and after all his offences against those laws are repeated, it is concluded that all are against the several acts of parliament in such cases made and provided. If Mr. Hale will single them, the impeachment, doth not, but relates to all of them; and, I think, that in this way of impeachment, we are not tied to those very nice and strict formal rules upon indictments: but if substance doth appear, it doth appear to you, my lord, that in substance the acts are pursued, and that upon the whole impeachments there are, even this that is required, the expression of an open deed, an overt-act; those are laid, and it will be acknowledged by Mr. Hale, that they are in themselves sufficient, being thus expressed and concluded, that those several practices, and designs, and treasons, are against the form of the several statutes in that case made and provided, not in relation to the 17th of July, nor the 2d of August, but to all of them. And I believe that all of these facts, all of this treason, all of this design, whether with the Scotch nation, or members of the Scotch nation, or those adhering to the Scotch nation, had all but one foundation, the subversion of this present government, that was the foundation and treason of the whole, that was it that was intended: for to bring one in, and not to cast out the other, would have done no good; but upon the whole, that was the treason. And upon all these circumstances and open deeds and designs, the sum, though it be a treason to hold correspondence, though it be a treason to promote Charles Stuart, though it be a treason to do other things; yet the treason is in this, the Scotch nation to come in with intent to subvert the government, Charles Stuart to be made king to subvert the government. So that the grand work at heart, at root, was the subversion of the present government; and as for that, I wish heartily, for Mr. Love's sake, there were not so many open deeds expressed by him.

*Sir Tho. Witherington.* Mr. Hale speaks of the charge; the words are these: "and further to carry on and accomplish the said traitorous and wicked practice and design, he the said Christopher Love" (now this I take to be the overt-act) "divers days and times between

\* See No. 42, vol. 1, page 515.

the 20th of March 1650, and the 1st of June 1651, at London and divers other places, as aforesaid, did traitorously and maliciously use and hold correspondence and intelligence by letters," (these are open acts) "messages, instructions, and otherwise, to the prejudice of the commonwealth;" and these are laid within the time, and not a distinct charge, as Mr. Hale would infer; but they do directly set forth an overt-act done by Mr. Love.

Mr. Hale. Is it your lordship's pleasure I should reply any thing, because I come utterly unprovided for it, I must profess?

Att. Gen. We may give him this, and one or two more.

Lord President. Go on, master Hale; if you have that that is material for another reply, do; but take this, master Hale, I take it very strong both in grammar and logic too, as well as in law, that when all the whole charge is radically and fundamentally but one treason, though there be many branches of it, the charge hath knit them all together, and made but one act of so many complicated treasons as are here; and when he comes to the latter end, if some of them were *de facto*, not by an overt-deed published, yet if he come and prove, that it was so done by the proofs, that there was correspondence, and these things *de facto* done, and that charge *de facto* done, you cannot break it there, to say that this fact did not reach to all: for if there be any one, it is sufficient; but here it is to all, even to that one that you speak of.

Att. Gen. My lord, I shall read a word to Mr. Hale; "All which treasons, and traitorous and wicked practices and designs of him, the said Christopher Love, were, and are to the apparent hazard of the public peace of this commonwealth and free state, parliament and people of England," [Mr. Hale findeth not these in any indictment.] "And to the manifest breach, contempt and violation of the laws of this land, and contrary to the form of divers statutes and acts of parliament in such case made and provided;" in general, my lord.

Mr. Hale. We conceive, under favour, and we think that it cannot be denied, that such a conclusion will not serve the turn.

Att. Gen. No, not in an indictment.

Mr. Hale. If there be a substantial part of the Charge omitted, that ought to be alledged in fact, it is not in the conclusion, "That contrary to the form of the statutes in this case made and provided," will help it. My lord (I come unprovided) the Case of my lord Dyer; that known case upon an indictment for recusancy, or for a wilful or knowing harbouring of a jesuit or priest: saith my lord Dyer, "It is not enough to say he did harbour him contrary to the form of the statute, but he must say, he did it knowingly: he must alledge and pursue the substantial words of the act of parliament." And so again, an Indictment for absenting from church; it is not enough to say, He did it 'contrary to the form of the statute;' but that he

did it 'obstinately.' Therefore that general conclusion, that this was 'to the hazard of the commonwealth;' (it is true, it is an ill thing for a man to do such a thing that is to the hazard of the commonwealth) but those words serve not the statute neither: and then to say at the conclusion, 'contrary to the form of divers statutes,' that will not help it, under favour, in case of an indictment. Then Mr. Attorney makes a difference between the case of an Indictment and this Charge. I conceive that in this case there is no difference; the matter is the same, the one concerns the life of a person, and so doth the other: the offence is the same; the one is a Charge of high treason, and so is the other. It is true, those formalities that concern the manner of the trial, those (it is true) are laid by, because here is no jury to come before your lordship; but your lordship trieth upon the hearing of the testimony, and according to things alledged and proved. But for other matters that especially are substantially required by the act of parliament, we conceive that those shall be supplied no more by an intendment in case of a Charge before your lordship, than in case of an Indictment for treason. To this I shall say no more, but leave a word or two to your lordship's judgment. For the other thing (we are all but upon the first Charge, the first Article) it hath first of all been insisted upon, that an overt-act is not necessary to be alledged, because supplied by the words of the conclusion, "contrary to the form of the statute." To that I have answered, I conceive, it is not, nor can it be supplied, because it is a substantial thing in the very words and bowels of the act, and cannot be supplied by a general conclusion. Then it hath been said by sir Thomas Witherington, the state's-serjeant, that in this case those subsequent matters and charges shall be an overt-act within the statute; that is that which he hath read to you; it is in the fourth Article (as I take it) "That Christopher Love divers times between the 29th of March 1650, and the 1st of June 1651, did traitorously and maliciously hold and use correspondence and intelligence by letters and messages." But that cannot be; I may say it, that is not a sufficient manifestation of an overt-act, because there do precede it these particular charges of treason within particular acts of parliament. Why then, if so be (to maintain his design, for the carrying on of his design aforesaid) this should be said to relate to the first design, why not to the second design of promoting Charles Stuart to be king? And why not to the third design? So that where there are three several designs before, all made treason by the acts of parliament, that cannot be an overt-act to make good the first part of the Charge, with submission to your lordship's judgment. And then another thing we say, that this Charge which sir Thomas would carry up to the first Charge, and make it as an enforcing an overt-act within the first Charge, that cannot be, for this other reason; because it is charged as a traitorous distinct act



in him. Now we have this learning delivered by sir Edward Coke in his comment upon this, in the 25th year of Edward the third; that is where there are several acts made treason, the one is an act for levying of war: now there the case was treason against the person of the king, queen, prince, &c. that one part shall not be an overt-act in case of an indictment, shall not be construed as an overt-act for the making good of another part; because where all are made equally traitorous, and all are charged as equally traitorous, we think, with submission, those parts shall not be made an Overt-act to another treason. So when here is a treason made by the act of the 17th of July, and another by a subsequent act, that which is charged as a treason in the subsequent act, shall not be said to be an overt-act for the making good of the former; if the former be not a treason, able to maintain and support itself, this subsequent act shall not serve as a bolster to uphold it, and to supply that which is laid as a distinct treason of itself. Now these are the three things we insist on: first, that an overt-act is necessary to be laid. Secondly, That it is not supplied by the general conclusion, nor can it be. Next of all, That this Act that is here laid to be done traitorously, to hold correspondence and intelligence, it refers no more to the first design, than to the second or to the third design, which are charged as three distinct treasons; and this is charged as a distinct and positive treason of itself, and therefore shall not be carried over as a Supplement to another.

*Att. Gen.* We granting that an Overt-Act is necessary to be expressed; grant it should be so, but no more but in evidence: and then granting in the next place, that the general conclusion will not be sufficient to maintain it, when it is requisite an open deed should be expressed. Then for the third, I cannot be of his judgment in this way of impeachments; but as we see one person may commit four or five treasons, and one act may be an offence against four or five acts of parliament; and this is the truth; for where the several acts are repeated, that (my lord) are those laws against which this treason, and this treasonable practice and design is laid to be; then follows the several enumerations of those practices, designs and open acts of his, now applied by us: but Mr. Hale would take them and apply them to one singly. But I observe to your lordship, that those open acts of his, are offences by an open act against the several acts of parliament; but it serves his turn for his client to apply them so: but I hope you will not apply them so; but when they come between the offences, and the overt-acts follow it, and the conclusion upon the whole, that all those traitorous and wicked practices and designs are against the several acts of parliament; and if there be an open act, so expressed, in the impeachment, that in law is an open act, suppose it should be required to be expressed, if there be an open act, then I hope

you will be satisfied, when it has been well proved, if it be expressed in the indictment an open act, that I hope will satisfy your judgments and consciences; especially when open acts shall appear to you to be an offence against the acts of parliament. I shall leave this to your judgment, and trouble you no further; and you will find in its place whether it be requisite or not.

*Lord President.* That that Mr. Hale said, if it were a thing of absolute necessity in an indictment, then the conclusion will not help; if the thing were of absolute necessity there charged, and not charged *contra formam statuti*, will not do it; but if I understand it right, it is fully laid in this Charge, that he did by open and overt-act do the thing; it is laid so: the words of open acts are not, but the value, that is, that he did by writing, by words, by messages, by money; and these are really overt-acts, though he did not call these overt-acts; these are laid fully in the Charge: and then, if they be laid fully in the Charge, and we satisfied in the full proof of that Charge, that we have heard overt-acts to maintain it, then I think this cannot come within any of those cases, that when an essential thing is left out of an indictment, there the conclusion will not help: this I conceive so far. Then the next, what method or order this can be, by setting down the statutes, and then withal these overt-acts of letters, of messages, of money, will reach to every one of the qualities, that these treasons are manifested by this act? but if it were a treason of such a nature, that none of these could reach to the manifestation of it, then you say well: but when these words reach to the manifestation of every charge laid in the Charge, then it is effectual and real, and the conclusion is sufficient.

*Att. Gen.* Before he goes to the next, I shall crave your direction in it; for I profess, my lord, to you, that I, in drawing the impeachment, take not myself to be so strictly tied to the forms of indictments in letters and syllables; and the forms I have taken and do take, are those that have passed heretofore, and I follow them; and till I receive your direction to the contrary, I take not myself bound but to express the substance of that which is laid to his Charge, by which he may know his offence, and give an answer: But to forms, and quiddities, and niceties, I conceive I was not bound to that.

*Mr. Hale.* I press not forms, nor quiddities, nor niceties in this business. The next is concerning the Charge of promoting the prince of Wales.

*Att. Gen.* No, there is no such thing in it; your copy is amiss again; read it.

*Mr. Hale.* Our Exception is this (we have been but upon the first all this while, I take it so) the next is, "That he did traitorously publish the son of the late king of England, to be king of England, (meaning this commonwealth) without the consent of the people in parliament first had or signified by Ordinance to that

purpose." I think we shall not trouble your lordship much with that; for if that be as our copy is, it is true, it is not well laid: but if it be never so well laid, I conceive, as I am informed, there is nothing of that endeavoured to be proved.

*Att. Gen.* That we leave to the Court, Mr. Hale.

*Mr. Hale.* Then the next is, "That to accomplish the said traitorous and wicked Design, Christopher Love did at several days in the years aforesaid, traitorously and wickedly advise the Scots." Our Exception to that is this: There is a treasonable assistance charged, in some of the years that were before the making of the act that did inhibit it.

*Att. Gen.* And afterwards too, Mr. Hale.

*Mr. Hale.* It lays it in some of the years before the making of the act, and that is sufficient to invalidate this Charge.

*The Clerk.* "And further, to carry on and accomplish the said traitorous and wicked practices and design, he the said Christopher Love several days and times in the respective years aforesaid, at London, and divers other places within this commonwealth of England, and elsewhere, as aforesaid, together with the said William Drake, Henry Jermin, and other their complices aforesaid, did traitorously and maliciously invite, aid and assist the Scots, being foreigners and strangers, to invade this commonwealth of England, and hath adhered to the forces raised by the enemies of the parliament and commonwealth aforesaid, and keepers of the Liberties of England, as aforesaid."

*Att. Gen.* You will find this in a Statute before this.

*Mr. Hale.* Not before the 17th of July 1649, and then your charge is repugnant; you charge us for an offence which is precedent to the statute.

*Att. Gen.* For that, you go and take them and pick them; but we lay them all together: there were treasons he committed in 1643, and that which I pitch upon still is this (that Mr. Hale thought was waved) That this man did not promote the interest of Charles Stuart late king, or that he had not endeavoured a subversion of this government; I say that against this act made in 1643. Then by consequence to maintain that, he did it to promote his interest, and to subvert the government; and there was a law in 1643 that did inhibit that; there is a law inhibits the calling in of strangers; and it follows by that, that he who calls in strangers, may promote the interest of Charles Stuart too: and that foundation is to this purpose, that he did promote him to have been king of England; and you know what he expressed to you, what tenderness of conscience he had to take care that he might not go elsewhere.

*Mr. Hale.* If it be so, then we must desire that part of the Charge may be read.

*Att. Gen.* I have not charged them, nor until I receive command, shall I vary from what I have received formerly, that I shall

charge this to be against this, and that against that; but I have laid down the acts of parliament that have made things treason, and the offences severally, and upon the whole conclude, that those are treasons against several acts of parliament severally; if one or all together serve turn, I hold it well enough. If you put me to every one of them particularly, I must have more time, and better clerks to draw the indictments.

*Mr. Hale.* Still the same objection meeteth (with submission to the Court and Mr. Attorney, the same objection meets) with them; we say then, he will make this a kind of an additional charge to the first or to the second, or to both; but we know not to which.

*Att. Gen.* Yes.

*Mr. Hale.* But we say, That that is not sufficient upon these reasons, because it is a charge of Treason in itself, and therefore shall not be made an additional and supplemental Charge to make out another. And then we say, that this is uncertainly charged, whether you will make it supplemental to the first charge of treason, that is, the endeavouring of the subversion of the commonwealth; or to the second charge of treason, which is a distinct charge of treason, of the promotion of the interest of Charles Stuart.

*Att. Gen.* I cannot divide them.

*Lord President.* Are not these as perfect as before? Doth not the subversion of this Commonwealth promote the interest of Charles Stuart? And doth not the promotion of Charles Stuart subvert the interest of this commonwealth? If he hath laid it, that he did both or these by assuming it by a double or multiplied act; and all these multiplied acts are but one subversion: if I subvert it by one, or by twenty acts, both of them are the same in nature; for the subversion of the one, is the bringing in of the other; and the bringing in of the one is the subversion of the other; and so they are relatives fully one to the other, and there cannot be more expressed in the Charge than this. And notwithstanding all these acts, though that act hath made the treason, cannot it be by another act? You may prosecute by virtue of this subsequent act, any thing that was understood to be general treason by the law of the land.

*Mr. Hale.* My lord, this is that we insist upon. It is true, we do conceive, though the promotion of the interest of Charles Stuart is not consistent with the preservation of the interest of this commonwealth, yet every destruction of the interest of the commonwealth is not therefore a promotion of the interest of Charles Stuart; for then there could be no treason against the commonwealth, but it must be a promotion of the other's interest. Now there may be a treason against the commonwealth, without the promotion of the other's interest. I urge it to this purpose, to make it appear, that they are several charges bottomed upon several acts; and therefore the reference here made to promote the design aforesaid, is

uncertain to which it shall relate : it may fall out the party may be guilty upon the first article ; it may fall out that he is not guilty upon the second article, and then it is uncertain to which article it relates, that he is guilty of, or not guilty of : and here may be the consequence of it, then you will make a treason, which to this third clause is a substantive, and contained in itself, to be an overt-act to another charge of treason, and that you cannot do ; you cannot make a treason which is so charged, to be an overt-act, or exposition, or a declaration of that which is contained in the former ; like that case I instanced in before, of the 25th of Edw. 3, that no man shall go about to destroy the person of the king, nor to raise war against his people : so that we use it not in any other reference, but only to explain and bring the reason of that ancient law to this law. In that case a man cannot charge the overt-act of going about to destroy his person, which is a distinct treason of itself, to be an overt-act to the charge of levying war, which is another distinct treason. And if he alledge, such a one did go about to destroy the prince, or the consort of the king, or the king, and to make the levying of war to be an overt-act to it, this he cannot do ; because, though it is true, it might be an overt-act to it, yet notwithstanding it being made a distinct treason, it cannot be an overt-act to another treason : and so here, this very assisting and mixing of forces is made a distinct treason. And so if you take it substantively, it is insufficiently laid : and if relatively, you may not do so, because it is a treason of itself, and shall not be brought in relation to another treason laid before it.

*Att. Gen.* For that, I hope Mr. Hale will leave me to that liberty I have ; that is, that if one act be an offence against several acts, I may aggravate it so, as to make him know it is so. And I take it for an aggravation of his offence, when he hath offended against so many several laws, which he hath done ; and that I may have liberty to say so, though perhaps that subversion of this government is not in every respect a promoting of the interest of Charles Stuart : But the subversion of this government, as it is here laid in this indictment, is a promotion of the interest of Charles Stuart. And so it is here. And I have done now with that.

*Ld. President.* Then, Mr. Hale, I will add a word, because that you did put the case of a man destroying the person of a king, and levying of war. If it be laid : those very acts, if they be laid as a continued, or a medium, or an enterprize, that he had taken up a war to destroy the person of the king : those words in one sense, if it had been laid soltarily by itself, and destroying the king in another ; but if he shewed that by levying of war, he endeavoured it, then the denomination is from the end in that place : and though they be two treasons substantively, yet when they are laid as one continued act, they are but one. And so it is in this case : all these, though there are

VOL. V.

several statutes, and several treasons, these multiplied acts make up but one complete in the conclusion. If there want one of these, if there be sufficient in the other, it is treason enough, and too much too, (I would it were not so :) If they be laid in subordination, as all these are, every one of them further to promote this, and to promote that, so they are laid in promotion of it to every one : And then they are contiguous, and depend one upon another, and are substantive ; and so substantial, as that they may be relatives one to another. And so are these.

*Att. Gen.* The next, Mr. Hale.

*Mr. Hale.* The next is the fourth Charge ; and that is concerning holding correspondence by letters and messages with Charles Stuart, and the late queen his mother : We say that this part of the Charge is ill laid also. It is laid nature of a felony by the Act, and laid to be done traitorously in the Charge ; and that a substantial (not a mere formality, but a substantial) mistake : For if so be a woman be indicted of petty treason, because it is *Proditoria*, yet in truth it amounts but to felony. Now, in case where she is an accessory to a felony, the indictment is nought. If a man be accused that he did traitorously such an action, which in itself amounts but to a felony, that Charge is nought. And so it is here ; it is mislaid : For by the Act of the 29th of March, 1650, the matters therein charged are not made treason, at most but capital, but we think it only prohibited, and then we say it is an uncertain Charge. And so it is, under favour : for though the Act saith no man shall hold correspondence by letters, messages, or otherwise ; yet when we come to inform upon it, or to indict upon it, it is not enough to say he held correspondence by letters, messages, or otherwise : but, if you will ground your deed upon that act, you must shew what that 'otherwise' is. And that is the exception to that part of the Charge.

*The Clerk.* " And further, to carry on the said traitorous and wicked practice and design, he the said Christopher Love divers days and times, between the 29th of March, 1650, and the 1st of June, 1651, at London and other places, as aforesaid, did traitorously and maliciously give, hold use, and maintain correspondence and intelligence by letters, messages, instructions, and otherwise."

*Mr. Hale.* 'Or otherwise' was our Notes ; then that is out of doors : But our Exception is, That it is alledged to be done traitorously.

*Lord President.* And the Statute saith it shall be treason.

*Mr. Hale.* No, it saith not so : The Act lays it only in nature of a felony, and in the Charge it is laid to be done traitorously ; and so the Charge is mislaid.

*Att. Gen.* I confess it is expressed so in the 29th of March, 1650, and it is not said what the offence is ; but I conceive, in the first place, that by the law of England he that holds correspondence with a traitor will go very near it,

Q

my lord. And then I humbly conceive that still, he going upon the first act, it is laid to be with Charles Stuart, and the queen and counsel with him, I think, it is a promoting of his interest: he to hold a correspondence with him whom the Parliament hath said, You shall in no case promote his interest.

*Mr. Hale.* I must be bold still a little, to crave Mr. Attorney's favour, to reply upon him in this kind of way; for I have not had time.

*Att. Gen.* You have had more time than I; for I heard not of it till now.

*Mr. Hale.* We say the Charge is not good, because it is made felony only by the Act, and laid in the Charge to be done traitorously; and then we say that Charge is uncertain to what design it relates: If it relates to the business concerning the promoting of Charles Stuart's interest, if it be so, we conceive it is not proved: for the proof I mention not; but that is not insisted upon, that Master Love did promote the interest of Charles Stuart, contrary to the act of parliament; that, I think, is not insisted upon.

*Att. Gen.* O, yes.—*Mr. Hale.* I conceive no.

*Att. Gen.* I conceive very much otherwise, *Mr. Hale.*

*Mr. Hale.* I desire that Charge once more may be read, concerning the promoting the interest of Charles Stuart.

*The Clerk.* "And the better to carry on and accomplish the said traitorous and wicked practice and design, he the said Christopher Love, with the said William Drake, &c. (since the death of Charles Stuart, late king of England, who, for his notorious treasons, and other tyrannies and murders by him committed in the late unnatural and cruel wars, was by authority, derived from the parliament, justly condemned to death, and executed) several days and times, in the respective years aforesaid, at London aforesaid, and sundry other places within this Commonwealth, and since this nation was settled in the way of a Commonwealth, or a free state, as aforesaid, did traitorously declare, publish, and promote Charles Stuart, eldest son to the late king, to be king of England."

*Mr. Hale.* We are informed that there is nothing of any particular act of his concerning that: but we have nothing to do with the fact. But we conceive that no subsequent thing, by way of construction or interpretation, shall make a publishing and promoting in such a manner as this is, it must be such a thing as expressly publisheth and promotes him to be the chief magistrate of England, according to the words of the act, and not by way of dilation: We say this is not a thing to be applied to serve the turn, upon this reason; we say that the holding of correspondence and intelligence with Charles Stuart, eldest son to the late king, cannot be coupled to the promotion of the interest of Charles Stuart, to be king of England, seeing that is but by way of interpretation to bring it within the first part of the act.

*Att. Gen.* For that, I shall crave your direction.

*Lord President.* It is not interpretative, but positive.

*Att. Gen.* But I shall crave your pleasure; Whether I shall in my impeachments afterwards put in all my evidence? What is charged, and evidence proves, that you will judge upon, I hope.

*Mr. Hale.* Then the next part of the Charge, and that is the fifth, That he did hold correspondence with divers persons of the Scotch nation. Our Exception to that is plain: we conceive that part of it is not well laid neither; it is not laid in pursuance of the act of parliament, as our Notes are. This is that we say, That it is not expressly alledged, that they were persons residing in Scotland, our Notes are.

*Att. Gen.* Like enough so, Sir.

*The Clerk.* "And further, to carry on and accomplish the said traitorous and wicked design, he the said Christopher Love, several days and times in the respective years aforesaid, at London aforesaid, and divers other places within this Commonwealth of England, and elsewhere, as aforesaid, did traitorously and maliciously hold and maintain correspondence and intelligence with divers persons of the Scotch nation, viz. with the earl of Argyll, London, Lothian, Bailey, Belcarrias, and divers other persons of the Scots and other nations, whom he well knew to adhere to the Scotch nation in this war against the Parliament and Commonwealth of England."

*Mr. Hale.* This we conceive is not a good Charge; for the words of the Act of the 2nd of August, 1650, upon which this is grounded, are, That no man shall hold correspondence with the Scotch nation residing in Scotland.

*Att. Gen.* You were best read further, *Mr. Hale.*

[Then *Mr. Hale* read part of that Act, beginning at these words, "Be it enacted, ordained, and declared by this present Parliament," and ending with these words, "Without the allowance, licence," &c.]

*Mr. Hale.* It is true, there is no residing; for that yet comes not home, we conceive, to part of the Charge. There are two parts of the Charge; the one, "That he did maintain correspondence with divers of the Scottish nation; and with divers other persons of divers other nations, whom he well knew to adhere to the Scotch nation in this war against the Parliament." As to the first, that is out of doors: Then here is no full charge of holding any correspondence with any of the Scotch nation; for that part of the Charge rests upon this, that it must be with holding of correspondence with any such persons as are residing in Scotland, and with any other person residing there. Then as to the other part—

*Ld. Pres.* It is a continued speech; Not with the Scots, nor any other.

*Mr. Hale.* Then here is another thing in it: That it is not averred that such a correspondence and intelligence was held without the licence of parliament.

*Att. Gen.* You are mistaken in that; your Notes are not true.

*The Clerk.* "And he the said Christopher Love, within the times, and at the places before mentioned, did traitorously assist, encourage, without the special licence of the Council of State, or Parliament, or Captain-General of the Parliament Forces."

*Mr. Hale.* We say then, these are two distinct Charges, and grounded upon two distinct parts of an act. But there is more in it, which we conceive is not to be answered, with submission; under favour, it is said he did it within the times aforesaid: The times that are aforesaid are between the 29th of March 1650, and June 1651. Now this act, whereby this is made traitorous or treasonable, takes not place till the 5th of August, 1650: So that it might be done within the times aforesaid, that is, between the 29th of March 1650, and June 1651, and yet not contrary to the act of the 2nd of August, which was 1650.

*Sir Tho. Witherington.* We lay it within all the times aforesaid: And I suppose the matter of the Evidence hath told you the times, which now we are not to dispute.

*Mr. Hale.* Whatsoever is done between the 29th of March 1650, and the 2nd of Aug. 1650, is not done contrary to the act of the 2nd of August 1650, upon which act this Charge is grounded: There is a time between them, and between the time of exhibiting of these Articles. Whatsoever is said to be done between the 29th of March 1650, and the exhibiting the Articles, is not said to be done after the 2nd of August, 1650. For if it be done between the 29th of March and the 2nd of August, it is done within the time aforesaid, that is, between the 29th of March 1650, and June 1651; and yet not done contrary to the act of the 2nd of August, because done before the act came forth.

*Att. Gen.* Though Mr. Hale will not consent to it, we will strike out the 29th of March; and then he will not deny but that is good enough, with that stricken out, before the first of June, 1651. Whether it be not good enough, and no time laid before it?

*Mr. Hale.* No indeed, it is not good enough.

*Att. Gen.* Why not? It is after the offence committed.

*Mr. Hale.* Because it may as well be before the act, as after the act.

*Att. Gen.* If we lay it after the offence committed, I suppose it is well enough; and the wisest will think so. Lay it to be the 1st of June 1651; Suppose it were in September before, it is good enough.

*Mr. Hale.* If you lay it upon the 1st of June, it is a year: before it is not good enough.

*Att. Gen.* That that Mr. Hale insists upon, he may say it is before the 1st of June, 1651, so long since; but in a just and reasonable intendment, when we insist upon that law that makes it treason to hold it after such a time, and we say that before the first of June, 1651,

he did commit treason in holding correspondence, and sending provisions of war before that law, though it were before the second of August, 1650, that were not against that law.

*Mr. Hale.* Still we say, That "contrary to the form of the statute, or contrary to the form of the law," which is but the conclusion, shall not supply that which is material to be alledged. Now when here is an act laid to be done, certainly it is material to alledge that it is done in such a time as may appear to be after the time of the prohibition of it to be done. The prohibition runs to the 2nd of August, 1650. That no man after the 5th of August shall do such an act: Then it must be laid to be an act done after the 5th of that August. But it is not laid so here; but laid so as may be intended to be done before the 5th of August: For here is a time laid between the 29th of March, 1650, and the time of the exhibiting the Articles, which is in June 1651, and that he did this within the time aforesaid. Now he that saith he did it the 30th of March, saith he did it within the time aforesaid; and yet saith not that it is within the act.

*Sir Tho. Witherington.* We have given an answer to that: We have laid it within and without the time. That is within the time, the Witness doth prove it: and Mr. Hale speaks not to what we have proved, and cannot speak to it.

*Mr. Hale.* The Proof shall never supply the insufficiency of the Charge: For we may as entirely offer you an exception to this matter after you have heard the Proof, as before you have heard it; for it stands no ways upon the Charge singly; so that it shall not be supplied out of matter that appears in the Proof, but it must be considered whether the Charge can supply itself, or not: for that that is alledgable against the Charge before the Proof made, is alledgable as well afterwards. If it were not good before the Proof, the Proof shall not be supplemental to it: For upon that reason, if an indictment did want time or certainty, then after the party were heard upon his Defence, it might be said, when this Exception was taken to the Indictment, all this might appear upon the Evidence. But that will not supply the defect of the Indictment.

*Att. Gen.* I am sure we have laid it late enough, the first of June, 1651, before that time; and Mr. Hale's Exception is still upon that way of proceedings upon indictments: He must have that positive and strict certainty in each particular. I must give it that answer still, that if you do in these cases put me to it, to express every particular circumstance of every particular fact, and every particular time, and that it must conduce in the conclusion of it, I must make you impeachments that will not be fit for you to read, nor hear: But, under favour, if that it contains in it this way of charge that convenient certainty, that convenience that may put the prisoner to the knowledge of it, and to prove it. For this relates not singly: For if I should go that way

Mr. Hale hath laboured to draw me, that is, to take every one of these severally, and that I must make a distinct charge upon one, and upon the other, and a distinct evidence upon one, and upon the other: I conceive these run quite through all the laws, every one of them. Had I confined this now between the 5th of August, 1650, and June, 1651, then what had become of all the laws before that time? Therefore to make them relative to all, I have expressed such a time as may relate to all: For had I confined it singly upon this or that act, whereas I humbly conceive that these acts, and the offences of Mr. Love, are relative to more than one act of parliament, and go to several acts: And therefore I cannot confine myself to one act, and say it was done at such a time, and there limit it, and let it die. But my endeavour hath been, and upon this particular we debated it, when we did draw it: we put it so that the several acts may have the several effects, and Mr. Love's treasons look upon every one of them, and they upon every one of his treasons; and as his offences run through, and against all the acts, so must our laying it upon him run, and the evidence also. And though we took care to try it back far enough, that was, to the 1st of June, 1651, and so laid it high enough to the other, that it might reach the rest. And in this way we are not tied so to express it in every particular, as other indictments run.

Mr. Hall, Attorney of the Dutchy. He would charge it upon the times between the 29th of March, and the 1st of June: that be not the times that we have expressed in this; for it is that within the times aforesaid we have positively laid, that it was in the year 1651: For we have laid before, that in the years 1648, 1649, 1650, 1651; then in the times aforesaid we have positively laid that this fact was done in the year 1651, which of necessity must be since that act concerning the Scots was made: And that I conceive is an express positive time mentioned in the charge, and gives a full answer to that objection; for it is not within such a time, but in the year 1651.

Mr. Hall. That charge is within the times aforesaid, which is last mentioned, between March 1650, and 1651.

Mr. Hall. That we shall submit to the court, whether in the same times aforesaid shall not relate to all the times beforementioned, as well as the particular times he hath picked out; for we mention that in the year 1651, these things were done.

Att. Gen. For that I have given you, that that is the general answer, if I be put to it: Whereas Mr. Love had transgressed against the several acts of parliament, we have put it so, that we conceive his offences run through them all; and so we have laid them. And (I hope) we are not upon those objections, that we must express the direct days and times, as indictments run: But here is enough to make him know his offences.

Id. Pris. I conceive it is much better as it

is too, and more obvious to every understanding, and their interpretation, than as you would have it, a great deal: For the necessities of the day, it is not material, that you will agree; nor the week, if they lay a time so many months before, or after, if the proof come and fall within the compass of the charge. As the Proof is laid, so is the fact: The proof determines whether it were within the times without the law, or within the times aforesaid; for it is not within that time, and every of them, but within the times generally laid, all those acts were done. And those must be laid in particular which was at one time and at another, which were two years a-brewing, and are by the proofs laid in general; that is best to say one fact was done at one time, and another at another time, and at such a time, and not at such a time. It can be no man's judgment to be so laid in an indictment or charge: but they must be laid thus in general, and the evidence must make it particular, that it was within the times that are laid; as when there are no times, as from March to June and Aug. and after, if they be both laid, if the fact be within such a time that is within the law, all the other is out of doors.

Mr. Hale. My lord, thus, if it please your lordship, I think with submission to your lordship's judgment, that in such a case it is not in the proof to make good a charge; if the charge do not contain a sufficient certainty, it is not in the proof to make it good. My lord, I insist now upon the necessity of a day to be precisely laid. I know (though it is true, it hath been otherwise held in some cases), yet in a case of this nature, the day is now material; for now we are upon act of parliament. As now, if so be the statute of the 29th Eliz. enacts that every man that shall knowingly entertain a Jesuit, that that man shall be a traitor, shall stand guilty of treason; if so be a man would say in an indictment, that such a man between the 28th Nov. in the 23th year of the queen, and the 28th Dec. in the 23th year of the queen, did entertain such a Jesuit, this indictment would be naught, not upon the uncertainty of the day, but because it takes in a time which is not prohibited by the statute. The indictment may be true, that he did receive a Jesuit within that time, and yet that he did not receive him contrary to the form of the statute; and to say in the conclusion "contrary to the form of the statute," will not help it. For that is our objection, that it is not done contrary to the form of the statute, because it takes in such a time, as that it might be done before the statute came forth. We say that when there is a time laid between the 29th of March 1650, and June 1651, and that within that time he did do thus and thus, there is the fault; it doth over reach the time of the prohibition of the statute, for anything appears to the court: The court may find the indictment or information true, that he did it within this time, that is, between the 29th of March 1650, and June 1651, and yet for all that the party not in fault

to be impeached, because he might not do it contrary to the act; for he might do it between the 29th of March 1650, and June 1651, and yet do it before the act came forth, which was in August 1650.

*Mr. Hall.* My lord, I conceive Mr. Hale hath not answered that I alledged; But now, if there were no other times mentioned in all the Charge, but only between the 29th of March and June 1651, then it were somewhat; but when the times are expressed before, though that it was in the year 1651, and then we say 'in the times before said;' I conceive that 'in the times aforesaid' shall relate expressly to that time in the year 1651, and then it must be within the act.

*Mr. Hale.* That cannot be; that will make the Charge worse.

*Lord President.* That I conceive you are upon, is this, The very letter of the Charge: For you say, at this time that is laid he could not be a traitor, and you join it with a time in which he might be a traitor. This, you say, they lay in the indictment, That he did in such a time of March, and afterward; and at that time there was no law to prohibit it, and so that could not be a crime against him; and thus you say, no proof will help it; I take it, Mr. Hale, this is the substance. But if this be thus laid, and the proof doth come in, this is very essential in my judgment, when upon the matter, if this be, as you see it appears upon the face of the thing, that the proof must go to that time within the law; and therefore that will not vitiate at all such an indictment, if it were so: as you say. But I take it, that this being complicated with more laws, as I said before, though he were not guilty upon this, yet in the conclusion he is found guilty of that which is as to other offences.

*Attorn. Gen.* I shall say but this; We all know that a time is expressed but for formality; and that time that is expressed, is not material, so it be laid far back enough. But if I say it in June, and prove it in June twelve-mons, it is time enough for this, as your lordship was saying. That which I do say is, That I cannot confine this very act that is supposed to be, and yet not laid to be against that act of the 2d of August 1650, from this clause, in express terms, not singly. But that which I humbly insist upon is this, That never a one of these offences singly transgress one single law, but is an offence against several laws. I conceive I had done myself and the commonwealth wrong, had I limited it to any one; for his complying with the Scots, and joining with them, and contributing with them, and receiving intelligence, it is more than against that single act. It is promotion of his interest, and subversion of the government, and against every one of the laws. And therefore, I conceive, I had not done right to the place I am intrusted with, if I should have laid it singly. But he is indicted, That as a false traitor he hath done these things; that is the preamble. And then we instanced the particulars, and give a time;

which time he will acknowledge is not positively necessary to be true, that that time must be the day the fact was committed; but if it be before, it is enough. But he infers, because this seems to be an offence within the statute of the 2d of August 1650, and is laid between the 29th of March 1650, and the first of June 1651, and so whether this can relate to that act; And by evidence you know it is afterwards. But this being an offence against several laws, I cannot charge it to be against one law; But the act is now, as Mr. Love began, to take it ampler and singly, and then it is nothing; And Mr. Hale takes it singly. It is not against this, nor against this; but it is against every one of them; and not against this singly, but against the rest of them.

*Sir Tho. Witherington.* My lord, it cannot be contrary to the form of the statute, unless it be done after the time, so that the conclusion shews it was laid within the time. But for the case, as Mr. Hale instanced in: He puts a case of one act of parliament; we are now upon offences against several acts of parliament. In that case, of retaining a jesuit, he is a traitor by the act of the 29th Eliz.; so that if he lays it between the 28th of the queen, and the 29th, if the jury find that he did retain him knowingly on the 10th of May 29, then it will not be denied but that it is an offence against the statute.

*Mr. Hale.* But still we say the indictment is naught in that case, because it takes in a time which was before the act came forth: so that the party might do it within the time expressed in the indictment, and yet not do it contrary to the act: And this is our case.

*Attorn. Gen.* My lord, you have heard us for that.

*Mr. Hale.* The last thing is concerning contribution to Silas Taus, and Sterks, a Scotchman. And to that we have the same exception: That that is not made treason by any act of parliament. And therefore it is mislaid to be done traitorously; for the statute of the 26th of March 1650, only prohibits it, and so makes it penal, but not treason. But then we say again, it is laid very uncertainly too, that is, at the times before mentioned. If Mr. Attorney of the Dutchy's constructions should stand, that is, that the times before mentioned refer to the time past, then he may refer to a time before the act. But we conceive the thing itself as not treason by the act, but only prohibited; and we conceive, under favour, still, that by way of reduction to any of the former charges, this shall not be made an instance or an overt-act, by way of reduction to any of the former Charges, because it is charged particularly to be traitorously done, because there are several charges of treason before. And that which Mr. Attorney was pleased to observe upon another occasion, That in this case the Charge is against several acts of parliament, it is true; but though it be against several acts of parliament, yet it must bind and pinch upon one; For we say one treason is not

to be made an instance to another, and so be made necessary, and depending, and accidental to another. And then we say in this case, that this being not a treason in itself, and being as uncertain to which of the former treasons it is applied, it cannot be well laid; nor well applied, that is, to the last, that he did voluntarily relieve Silas Titus, it is not made treason.

*Attorn. Gen.* It is against the act of the 2d of August 1650, in express words: read the Impeachment.

*The Clerk.* "And further to carry on and accomplish the said traitorous and wicked practice and design, he the said Christopher Love, within the times and at the places last aforesaid did traitorously and voluntarily relieve the said Silas Titus, Edward Massey, col. Bamfield, one Mason late of London gentleman, and one Sterks late of London gentleman, who then were, and yet are under the power of the Scotch nation in arms against the parliament and commonwealth of England, with moneys and ammunition. Which treasons and traitorous and wicked practices and designs of him the said Christopher Love, were and are to the apparent hazard of the public peace of the commonwealth and free-state, parliament and people of England, and to the manifold breach, contempt, and violation of the laws of this land, and contrary to the form of divers statutes and acts of parliament in such case made and provided."

*Mr. Hale.* Then we say, it is uncertainly alleged, and uncertainly laid; but we take it, it is not within the words of the act; we desire that act may be read.

*The Clerk.* "That shall from and after the 5th of August 1650, use, hold, and maintain any correspondence," &c.

*Mr. Hale.* Then this is not within this act, because that this is concerning sending to persons that are in Scotland; I observe not that it is charged that they were in Scotland.

*Attorn. Gen.* "O! shall abet, assist, countenance or encourage the Scotch nation, or any other person or persons adhering to them in their war against the commonwealth." What think you of relieving, is not that abetting and encouraging?

*Mr. Hale.* It should be laid so then. I desire that part of the Charge may be read again.

*The Clerk.* "And further to carry on," &c.

*Hale.* My lord, we think this is not fully charged according to the act.

*Att. Gen.* I will read you another, of the 26th of March 1650.

*Mr. Hale.* That makes it not treason.

*Att. Gen.* It comes very near it; but I insist upon it, it is under the other, relieving them with money, buying of arms.

*Mr. Hale.* Still the same exception lies upon it, within the times aforesaid, which certainly cannot be acknowledged.

*Att. Gen.* We acknowledge the same exception; and the same answer lies to it, that of the 26th of March 1650; it is, he shall suffer

death: and upon this it is treason upon both together, we cannot divide them, but must express them so.

*Mr. Hale.* Under favour, the one makes it felony, and the other a treason.

*Att. Gen.* But it is a deadly one.

*Lord President.* If a statute law makes a thing felony that was not felony, or recites a thing that is felony, and saith it shall be punished with death, being a petty larceny, therein you say well; but if the statute recites that that is treason in itself actually, and saith that they that do these things shall suffer death, according to the nature of that offence that is formerly recited, and limits it so in the recital, if the recital be treason in the beginning, and then say, that that traitor shall suffer death without mercy.

*Mr. Hale.* We have shewed our Reasons in the case, my lord; it is as much as we can say upon this sudden, concerning this Charge; there are some other things that are mentioned here by Mr. Love, as how far forth there be sufficient witnesses, admitting the Charge were good; how far forth the witnesses are sufficient in themselves; and then whether here be two concurring witnesses to any one act, and whether any thing be more proved than misprision of treason, and concealment of treason: These are things Mr. Love takes upon him in fact to say. And now for those, when the case is made, we shall be ready to speak to these things; for truly it is sudden and new to me, for these matters came not to my knowledge till this morning after eight o'clock; that is, concerning the last Paper he offers to your lordship, and that is, exception to witnesses, proof, and matter of the proof, whether the bare concealment (for thus it is stated unto us, the 'Concealment') of any thing that is treason, whether that be treason or no in the party that conceals it: these are things that if we were prepared for, we should speak to. First, we conceive by the statute of 1<sup>o</sup> & 5<sup>o</sup> Elizabethæ, there is a necessity in this proceeding before your lordship, to have two lawful and sufficient witnesses. Next of all, we think, that if these witnesses be such as he hath stated them to be; which whether they be or no, we know not, for we are utterly unacquainted with the evidence, yet we should think they are no sufficient witnesses: And then admitting they were sufficient witnesses, yet if so be one witness speaks to one fact, another to another, we conceive these are not sufficient witnesses within the statute, nor sufficient to convict him. And then if that which they have witnessed be nothing that amounts to treason, haply committed by others, that makes him not guilty within the acts. If we had time to understand, and digest, and consider, what were the matters that are alleged, we should be able to say somewhat to it. My lord, that which we have said, we have said of a sudden; and so it appears, because we had not that clear understanding of the Charge, as otherwise we might have had, and so have saved much of your time.



*Att. Gen.* For that that hath been said suddenly by Mr. Hale, I shall suddenly give it this Answer: He hath had more time than I, he hath said from Mr. Love, and not from himself: He saith when the case is made; I think it will appear then, that these exceptions have been made to the court, that the witnesses have not been competent neither in quality nor number, they have been spoken to. For the witnesses, the exception to the quality, because they were of the same gang, they had a hand in the same treason, that was the exception; I think that will not be allowed to be a legal exception; they are persons that (as Mr. Love pretended) had a hand with him in this fact, and therefore they should not be competent witnesses; that I shall appeal to Mr. Hale's judgment, before conviction, and upon a proceeding, whether they may not discover (and after conviction) if they be approvers. For the next, for two witnesses; when the case is made, you will find one, two, three, four, five, six, and to most of them two, three, and four, for so I may make bold to say, for so I read them to you the last day. And then for the last exception, that was for the concealment of treason, it is far from it, for I know not what a concealment Mr. Love may intend; I am sure Mr. Hale will not think that a concealment, to run one, two, or three years, and run on, and send letters; that when he acts along with them, and hath the meetings at his house continually, moves them to receive money, and contribute; I think he was the highest actor amongst them, for the meetings were continually at his house, the advices were there resolved upon debates, there he gave his advice one way, and they another way: I think he will not think this is but misprision of treason; and we never did charge it, nor intended it so, but went a little higher.

*Mr. Hale.* If that be declined to be insisted upon, that the non-revealing of treason, though it be a month or two, or a year or two, can be no treason, then we have done with that question; for that it will rest singly upon the fact before your lordship, whether there be any thing more proved than such a concealment, then it is true we are discharged of that question. But then concerning the proof, if master Attorney will please to admit, that the proofs are such as master Love hath stated in this Paper.—

*Att. Gen.* That I shall not do before-hand, but to debate upon the proof, I shall crave your lordship's directions; I have gone over them already, and it hath been trouble enough to me; if it be your lordship's pleasure I must go over the proof again, I shall submit to you, but not to him.

*Id. President.* Mr. Hale, there are no witnesses that have been heard, but they have been of the said confederacy, that was one exception Mr. Love made; it was debated at the producing, and over-ruled; and I believe your judgment will go well with us, that it was no exception. Another was, that they have been promised rewards; that was likewise moved and over-ruled, the court

was of opinion that they may do it; that if there be a treason, and there be many correspondents in it, and one out of remorse, as some of these did say, that when they had been there they did not like their ways, but went from them, and came to them no more; if this man, or any other man afterwards shall come and reveal this, it is in the power of the State either to reward him with monies, and to promise him life too, if he shall faithfully do it. And this, we say, is a stronger case than the case of an approver, which afterwards when they became approvers, they must confess the fact, and say they are guilty of the fact plainly and openly; and yet then they are good witnesses to discover this, as it was plotted in hell, for this was no other, though they had a vizard upon them, which was no otherwise: I say, if any one will discover such; nay, haply it was offered to Mr. Love himself, if he would have done it; I believe there were some overtures made to him. But this is law too, by the law of this land, which is the law of God; for we have no law practised in this land, but is the law of God: and so did the lawyers maintain it before the king in Henry the 8th's time, the pope's legates, and chief archbishops and bishops of England; and did then prove it to them, that there was no law practised in England but the law of God, which our ministers are loth to touch, and busy themselves to study, but study the ceremonial laws of the Jews, which are *Mortua Mortifera*, which are not to be practised by any other nation, till they be established by a law: and that which is the law of God in this land, that hath so much preserved it, these they are wilfully ignorant of, and say, it is civil; but I say, it is Christian law. And therefore never distinguish in a Christian nation, that the laws are moral and ecclesiastical, with that feigned distinction; but all the laws of this nation are Christian, and stand with evangelical truth, as well as with natural reason, and they are founded upon it; and therefore, Master Hale, we are here now to go on by these laws, which are the laws of God, and we must walk in them, as we would walk to heaven. And for that you speak of now, Mr. Attorney hath answered all the exceptions every one; and I think for that matter of fact, every one of them particularly. Mr. Love did take his exceptions too, and they were over-ruled. Now to come, whether these are lawful witnesses over again, when it is in matter of fact and over-ruled by the judgment of the court, Master Hale will not think that is regular. And then, whether there be two to one point or not, that is another of your exceptions; that, I take it (Master Hale), is not matter of law, but for the judges to consider of it: That which should be matter of law, is this, whether that single proofs, some to one, and some to another, joined all together do issue out all this treason? We want no precedents for that, for this is a heterogeneous treason; every particular that these statutes make a treason, they are all of them complicated, he hath gone through them all in his act, and we must pass through them

all in our judgments: though every one is particular treason, had it been singularly laid by itself; yet now being laid as one concatenated treason, they all of them make but one. For the next, for that of misprision, he is not charged here with misprision at all, but direct treasons; and if it be but misprision, we shall not for misprision judge him a traitor upon this charge. But then, what is in his judgment misprision? If this be nothing but a concealment, I think that the court upon the evidence will judge that it is more than a bare concealment; and whether Mr. Hale will think, if I be a promoter and concealer from one to another, and have so many continued meetings, whether two or three years together acting with them, and concealing them, for it is not a bare concealment, but a complicated act: for if it were but a bare notion of it, we should have much ado to prove it; but (I think) the court is satisfied, it is more than notion.

Sir *Tho. Witherington*. I shall speak a word to that Mr. Hale moved last, whether you will be pleased to hear any more of counsel in these three particulars; for, under favour, these three particulars concerning the witnesses, concerning their quality and number, and the treason itself, these are matters of another kind of nature than all the rest he insisted upon, for the rest are mere matters of law, upon the formality and insufficiency of the Charge. These questions of the witnesses are questions that are mixed; for they depend upon the matters in fact, and cannot be otherwise stated. Now Mr. Love, tho' he had no counsel appointed before, yet he had in his Defence all these objections too; as of the incompetency of them, because they were *Particeps criminis*, and for that I think (under favour of your lordship's judgment) he had a full and clear answer to it: in case of an approver, he is *Particeps criminis*, and accuseth men that are *Particeps criminis*; yet that man, even *ex merito justitie*, he shall be pardoned, saith our law: and therefore that objection that is made against the witnesses, that they are promised rewards and pardon, that is no objection, for in that case the approver shall have his pardon *ex merito justitie*. Then for the other point, that is, whether by two witnesses in such a plot or no, to prove a treasonable act, that is, consisting merely upon the matter of fact; that I shall not take upon me to repeat, you have heard it; but this I said then, and this I humbly offer now, that if there be two witnesses, though they concur not in the same individual act, yet if they concur in two acts, concurring to the same treason, they prove the same treason,\* if one prove the

sending of letters, and another the sending of money, I take it these are two witnesses, though they speak of two distinct acts; but in our proof we have gone on to two witnesses, three or four in most points. But then for the Misprision of Treason, we did apprehend that that which Mr. Love himself hath confessed, is treason itself; but Mr. Love is pleased to make his own collection upon his own confession: "For I confess my presence and silence after these meetings and consultations, but this I take to be Misprision of Treason." To this I replied, we took it to be treason itself; for our books say, a man must not sleep, nor look back, but go presently to a magistrate to reveal it: but when a man will not only sleep upon it, but keep it back, and act in it, this is more than misprision. But our charge is for treason itself, and truly treason comprehends a misprision of treason in it; but this point I think neither will come in question now: for we say and charge, that it is a treason itself, not misprision; and that collection Mr. Love makes, it is his own, but the judgment is yours, whether it be a treason or not.

Mr. *Hale*. If it be your lordship's pleasure, we are ready to say what we can in the shortness of time; but if it be not your lordship's pleasure, we shall not say it.

*All. Gen.* If your lordship please to declare what he shall speak to.

Mr. *Hale*. These points, I shall only mention them, I cannot argue them now. This is that I conceive: first of all, according as the case is stated, that is, Whether a person mentioned, that he shall lose his life, if he discover not a particular person, and that he shall have his life, if he do discover him; whether such a person be a competent witness or no.

*Jst. Gen.* Hear a word; I appeal then to you, whether any such person were produced before you.

Mr. *Hale*. First, we only go upon what supposition Mr. Love makes.

Mr. *Love*. I humbly crave leave to that effect, to prove that particular.

*All. Gen.* No, not now, Sir.

Mr. *Hale*. We conceive such a person is not a competent witness: then that is out of the case, it should seem, Sir. Truly, then the case that is put concerning an approver, comes not to the question, under favour; for though it is true, an approver at common law might

that the statutes of Edw. 6 are not repealed by that of Philip and Mary, and that two witnesses are still necessary; but insisted, that one witness to one overt act, and another to another overt act of the same species of treason are too sufficient witnesses within the acts. This gentleman was the first I have met with who considered the point in this light; in which, as I shall shew presently, it hath been considered ever since the Restoration." Foster ch. 3. s. 8. where is given a history of the opinions and practice upon this point. See, too, East, as cited in the next Note.

\* "In the case of Mr. Love, Hale, who was counsel for him, insisted, that two witnesses are necessary upon the trial in case of Treason, upon the foot of the statutes of Edw. 6. not repealed, he saith, in point of testimony by the Statute of Philip and Mary; and one of the counsel on the side of the prosecution, who upon the whole argued with candour, admitted,

be an accuser, yet we are not now upon a proceeding at the common law, when we talk of witnesses now, but we are upon a proceeding how far forth warranted for the witnesses, by the statute of the 1st and 5th of Edw. 6. So that what is said concerning an approver comes not to this question; he that may be a competent witness at common law, he is not a competent witness upon those statutes, for the words of the statute are expressly, "That he shall be a lawful and a sufficient witness." And if so be that such a case were now, it is not to sample this case that is before you with the case of an approver, which is a bare accusation at common law, and where the jury likewise are to have other evidence: For either the defendant may wage his battle, or put himself upon his country; and then it is at the pleasure of the jury, whether they will believe the approver or no. But by the act of the 1st and 5th of Edw. 6, it is expressly said, "There shall be two sufficient witnesses in case of treason:" So that that hath made an alteration of what was in the common law before; one witness was enough before, now two witnesses are requisite. And we conceive, the words "lawful and sufficient" conclude such persons. If there be not any such, we are to say we know, or know not: But if so be any person is drawn to make such a testimony for the preservation of his life, and shall make such an expression, we think, that though it is true he is not a person that is attainted, yet he is a person that is thus drawn; and we think he is not such a witness as is intended, especially in such a case as this is, where the trial of the fact is before your lordship, which is both jury, and judge to try the fact, and determine the law; and therefore perhaps here will be a more rigorous expectation who should be, and who should not be a sufficient witness, than in case it were a bare trial by jury: There may be those exceptions alledged against a witness when the trial is as now it is, that may not be when a trial is by a jury; and therefore if so be that a party be thus drawn to testify for the preservation of his life, we think that this is not such a lawful and sufficient witness as is required in such a case. Next of all it is said in the paper, that they have detected themselves, being parties of as deep a guilt as the person that is accused. I will not dispute that at this time; for it is not the case, whether a person that is a plotter and confederate with one that commits treason, may be a witness; but when a person is detected by lawful authority, before the Charge exhibited, whether such a person who is so detected, whose life is in the hands of the State, be one of these competent witnesses, we must leave it to your judgment in that: But we think he is not a competent witness; for there is not a bare accusation of a person, but (as the case is stated to us) by a person that should be examined, and confess himself guilty of those things whereof Mr. Love is impeached, and that before the Charge is exhibited. My lord, the next matter is con-

cerning the plurality of Witnesses, the number of them; we think, under favour, with submission, that in this case suppose the Charge had been singly upon one act of treason, we conceive, that in that case there is a necessity of two persons to prove that Charge: If the Charge be upon several acts of treason, be the Charge so: yet if you will bring them within any one of the acts, you must have two witnesses to bring them within that act. For suppose a man were indicted of treason heretofore for levying of war, and another treason for adhering to the enemies, and another treason for counterfeiting of the coin, or those kind of things; these are several Treasons, though they are all put into one information, and haply may be put, in case of necessity, into one indictment, as here are several acts put into one Charge. But now a proof of treason within one of the acts by one witness, and a proof of a treason within another of the acts by another witness, will not be esteemed and accounted a proof by two witnesses; for it must be a proof, not that he is within the Charge, but within that part of the Charge upon which he is to be arraigned: And here is not a proving each distinct part of the Charge by two witnesses, as the statute requires. And then to come nearer, suppose the Charge were but upon one act, as that he held correspondence with the Scots, and did invite them, &c. I conceive that in this case, under favour, that that particular act with which you will charge him to be a traitor within any one law, must be proved by two witnesses. The Star-Chamber course, I know what it was, that in case there were one general Charge, and when it did descend to several particulars; one witness would serve for one, and another to another, and a third to a third, and these should make up two witnesses to convict the party: But we are not now in a proceeding of Star-Chamber, that is laid by; it was not altogether so regular in all things: and then we are not in a thing barely criminal, but in a case of life; and not in the case of life ordinarily, but in a case wherein a party is accused of treason, wherein the statute doth provide that there shall be two witnesses (as I conceive) to swear to the same thing, by which you would bring him within it; otherwise they stand as single witnesses, every one apart. I have heard of a case (I have not had so much time as to look into it) concerning Mr. Rolph, indicted at Winchester; I will not so much as repeat over the case upon my credit to the Court; but I take it, it was this: he was indicted for somewhat about the person of the king; one witness deposed about the presenting of a pistol, or that he said he would; another about poisoning, or that he said he would: these two things did conclude in one and the same act; and though they concluded in one and the same as evidences, complicated evidences to make good one Charge, and either of them had been sufficient, if proved by two; yet as I am informed (this is the inconvenience, upon the sudden we cannot offer it

upon the confidence of our own knowledge, which a little time would make us wholly decline the mentioning of it, or affirm it upon our credit; but this I am informed) was not held a case proved by two witnesses; and if that be so, then I conceive these steps; the first will be agreed, that the proof of several charges by several witnesses, against several acts, will not make a proof by two witnesses; it must be a proof by two witnesses against one act. Therefore the proof of any thing against the act of the 17th of July, 1649, and another proof of a thing done against the act of the 30th of January, 1648, and another for a thing done against the act of the 2d of August, 1650; here the offences are several, the treasons several, and the witnesses to either stand singly by themselves. How the case of the fact is upon the proof, I cannot tell; that is, whether this falls out to be the case. But again, if the Charge were single, as now upon the act of the 30th of January, 1649, for proclaiming of the king, or promoting the prince of Wales's interest to be king of England; we think, with submission (which we shall leave to your judgment), that in that case there is a necessity of two witnesses to speak to one thing; and not one to supply one part, and another to supply another: that shall be as much as I shall say concerning that; and I could wish that we had had so much time as to look into it, to enquire what the truth of that case was which was tried at Winchester, as I take it. Now for the other matter, that is, Whether misprision of treason, concealment of treason, be treason? if that be not insisted upon.

*Att. Gen.* No, no.

*Mr. Hale.* Under favour, the law is, That concealment of Treason is not treason; but if that be not insisted upon, then the question of the fact is, whether there be any more than a proof of a concealment, or of a misprision of treason? Which if so be it be not, I can say no more.

*Att. Gen.* Truly, my lord, I did intend to speak to that of Mr. Love's case, and as of his making, but not now of his making, but as he hath made it formerly; surely, it is a great deal of patience and favour you have afforded him, that for matter of fact and law you have heard it all over again. As for that first, of the competency of the testimony, I shall remember his own division; first, of the Charge; secondly, of the Witnesses and the Testimony; the third, concerning himself; and the fourth, his humble Proposals to the Court. One part of his Defence was concerning the witnesses and testimony, that he made along defence to; and if it be not good evidence, that parties that are of the same robberies may not accuse their fellow-thieves, I think some must be unchanged that have been hanged: but that I shall not speak to, for I think not that Mr. Hale's judgment loads him to it; but if they were threatened, and should be made afraid of their lives, that were somewhat, but that is not the case here. The next is for two witnesses: I might

say, that by the common law of England one witness was enough before the law of 5 E. 6 was made; for else it was not needful to be made.\* And Mr. Hale knows again, that as to trial, those laws are repealed. But not to trouble you with these things, or to say wherein they must concur, I did crave the favour of you to read the witnesses as they deposed, and I did tell you when it was by hear-say, and when upon knowledge, and when by two, three, and four, to several acts of Mr. Love's own acting, two, three, four witnesses, I think they are number enough to accuse, and detect a person of as high quality. And for the last, for misprision of treason, Mr. Love hath said that which never came into my thoughts, that such actions done by Mr. Love could be judged misprision; he that acted with them, consulted, and debated, and plotted, gave his judgment one way, moved to raise money, received intelligence, all brought to his house, and transacted there: I would appeal to Mr. Hale's judgment, whether this could be misprision of treason, when a party acts in it, hath the meetings at his own house, and hath there debates of Commissions, and Instructions, and Letters; I think this goes as far beyond misprision, as treason is beyond misprision. But seeing these are new cases before you, you have spent enough of your time, I shall not spend more to argue the cases that are not.

*Love.* I humbly crave leave, that seeing my counsel some of them are rejected by the court, as not fit to plead before you; and seeing another of them, Mr. Maynard, the necessity of his affairs is such, he could not be here this day to plead here; and seeing this worthy gentleman came here unprepared, whose face I never saw till this morning; therefore I humbly pray there may be more time and counsel assigned me, with your favour and leave, that they may fully debate the argument before you, those matters of the law which are under his hand, and the hands of the two worthy gentlemen rejected by you to plead here, that others may be added to Mr. Hale to plead the matters of law before you, and that I may have a copy of the Charge.

*Att. Gen.* I hope we have had delays enough; it is with the court, now we have done.

*Love.* And, Sir, there are witnesses here present that will prove that which Mr. Attorney-General thought none could prove, to wit, not only general threats, if they would not confess in the general, but promises of favour, and threatening of death if they would not testify against me in particular: and I have manifold exceptions touching the incompetency not only of number, but quality. One witness

\* Of the Statutes requiring two Witnesses, and the construction had upon them, see *East's Pleas of the Crown*, ch. ii. § 63, 64, 65. See also in this Collection *Lilburne's Case*, Oct. 1649, *ante*, vol. 4, p. 1269. *Cook's Case*, A. D. 1660. *Lord Stafford's Case*, A. D. 1680, *post*.

said, he could not in conscience, and did not swear till he was threatened, nay, fined by you, and drawn out of the court: another witness had money laid to him by Cobbet, which was given to his wife, which did seem to conceal the bribery the more; but he confessed himself, that the money was laid down in his house, and given him to make use of, and to be the price of my blood (Sir) to testify against me. I have witnesses to produce, major Adams said, he should be hanged, if he did not testify against me; for he had given information, and had been in hire for many months together. Major Cobbet and three other messengers have come to him, and offered him preferment, for four months together, if he would reveal what he calls a design against the commonwealth; and he hath not revealed this, till he had these promises of preferment, and did not declare against me till he was threatened by death if he did not do it: therefore I beseech you, hear what witnesses I can bring in, to invalidate the testimonies of these men.

*Att. Gen.* My lord, it seems I must be for all. Now Mr. Love begins with the court, that you threatened them, and punished them: I appeal to all here, whether a witness brought into a court in matter of property, and refuse to take his oath, whether that court be not bound in justice to punish him; and yet if he shall see his error, and submit himself to do that which to justice belongs, then (I think) it is justice and mercy in you to remit him of both: and that is the case of this gentleman; in conscience he could not swear against him, a conscience well-wrought upon; he could not in conscience swear against him: for him it was done in the court, and by the court, and (I think) undeniably justified.

*Love.* He is not under an oath to this day, he hath declared it himself.

*Att. Gen.* This is to satisfy other men, but it is not so regular and orderly to be done: but my lord and the court are pleased to give you a fair hearing and proceedings, that no exceptions may be taken to it. There was another that was as good as his word, that he could not find in his conscience to swear against Mr. Love, and that was a minister; that conscience deserved to be rectified more than 500l. come to, and perpetual imprisonment: that man that cannot find in his conscience to judge him that was a godly person (as he thought), and against him he must not give witness, not for treason, not to save a commonwealth; and he hath had your sentence, and most justly: I think all that was, was too little, my lord. Then for the rest, this is a discourse to satisfy people, the spectators here; for surely these are extravagancies, and total irregularities; he hath had his time to except, and heard to except, and said all that he hath said now; and so there is nothing more to be done, but now for us to rest in your judgments what you will do further.

*Love.* I beseech you, I acquainted your lordship and the court, that some of the wit-

nesses were not well, others I could not get them here present, but did make offer to bring witnesses to prove against major Adams, that he hath confessed himself he was threatened with death if he did not inform against me; and he said these words, he could not tell whether he should in conscience think rather better to be hanged, than to come in against me; and he could swear only generals; and could not swear that ever I did write or receive letters. And Mr. Jaquel himself, since he was sent away from the court, hath said he was not under an oath.

*Att. Gen.* What course shall we hold? If you will not be regular, let the court be regular: had you not time for to do it then? Did he not demand indemnity for them? And rather than he would produce others to hurt themselves, he would rather die himself first.

*Love.* But these are not under a crime; I beseech you, the court would be tender in matters of blood.

*Att. Gen.* Be tender of justice.

*Lord President.* I would you had been so too.

*Love.* This man declares himself he is not under an oath to this day; he did but put his hand upon his buttons.

*Lord President.* Those were your very words, and very uncivil and indiscreet; you have not spoke at any time yet, but you have hurt yourself more than any body else hath; and yet your language is so liberal, that no man shall escape the lash of your tongue.

*Love.* I fear no man, my Lord.

*Att. Gen.* That is a bold word.

*Lord President.* You have as ill comments as any man that wears a cap; your guiltiness appears in this you say; we have heard all this that you require before: those very words that you say of this man now particularly, go to them first, that he was saying, he was not under an oath: it was said so again and again, and again at that time we brought him, and before he was examined, holding up his hand, we asked him it, and he said, he did; and put it to him again and again, Are you under an oath? till at last he did conclude and testify he was under an oath. I testify this before all the company here, this is noised abroad again by many people, the care we had of that very man you speak of; you asked him three or four times then, and at the last, upon the conclusion, he confessed himself he was under an oath: he did not do as you do; you will say things are truth, but you will not speak those truths before God in a testimonial way; though some of your witnesses that proved it, said it was true in the presence of God, what they gave under their hands: these men that do thus, are no better than Jesuits in reality, though not in name. You made a confession of misprision of treason, you said, but you have confessed treason. I will tell you who did the like in the very words almost that you did, and that was father Garnet; when he came to see the evidence produced so full against him by those that were *participes criminis*, as you are,

himself confessed when he came to the last. Had I thought, said he, that the State had had such clear proof against me, I would have ingenuously confessed it, and not trilled with them as I have done. So you said, you did not think it would have been proved so far as misprision: but when it was proved sufficiently in your apprehension, and convicted, and your counsel had informed you it could not be less than misprision, then you would ingenuously confess; so did Garnet. The other witness that was threatened, it was testified by a worthy captain; I speak it again, was it not debated as much as the wit of man could. Did you not object that then, that you do now? And did not the court then satisfy you, or at least satisfy themselves that it was not so? For I tell you, in that very thing wherein you say he was threatened, it was told you, That the captain that was here then, deposed what he had done, and how he had done it, and at what time it was delivered; for you were discovered long before that, and your examinations taken long before that. Upon this, now when your treason was discovered and declared by several witnesses, and that such a one was in confederacy; and I think the State might safely promise him life, and reward too; for there is more in the plot yet, than is yet found out, and that some are like to hear of within this fortnight, that were here, which is a dangerous thing; but this you did declare, and the court was satisfied, that all that was promised as a reward, was for discovering of a Plot against the State; and that was lawful by the laws of God and man. And now you bring witness; you were at first demanded, who her you would bring them or no? and you asked indemnity for them; and the next time you denied, you would bring none; and now you asked, What you have to offer to the court? and after all this time, what come you to do now? To prove that that was acted here in this court; you say we threatened them; true, that we did threaten some; and I think we went thus far, that if he would not, we would set 500*l.* fine upon his head; but he would none of that, but came in again, and delivered his knowledge. But you had another of your own robe too that came in, and he would not testify; and why? His conscience was tender; his science was perfect enough to speak against you, for he was confederate with you, and hath confessed enough of it; but his conscience was tender. No man can tell here whose conscience is crazy and tender: conscience is a thing betwixt God and man only; and they that lay nothing upon their consciences to prove their integrity, they had as good say nothing before a judge. For though we have a law of conscience in England, yet that law is judged by rules; and therefore he, whoever he be, that pretends conscience, there are so many consciences as there are men; and no men have power to judge of it, but God. But, Sir, for that cause that he would not for his tender conscience we did set a fine of 500*l.* upon him, and sentenced him to the

Fleet till he paid it. We call not this terrifying, neither doth the law; nor any reward, favour, or affection for the discovery of a traitor, is no illegal act; this we told you before, but you must have it again, and again, and again; so that you may delay, no time shall be omitted by you.

*Love.* I have but a few words more: your lordship was pleased to say, that you could justly promising rewards to those that would discover, and threatening punishments to those that would not; but you said, if I could prove promising of rewards or threatenings to them that would not testify against me, they should be heard: now I produce not witnesses in general, that they were promised favour, or threatened if they would or would not; but I offer to produce witnesses that can witness against some of the particular witnesses that said, they should be hanged, if they did not witness against me: and this, as your lordship promised, I humbly crave.

*Att. Gen.* Truly, he will not want suggestions, he hath had his time to prove it; and one favour I shall beg of the court, that this your patience to Mr. Love, your just favour toward him, may be no precedent hereafter; but for this, when we closed the evidence Saturday was sought for the Commonwealth, he had till Wednesday following to make his defence. For his witnesses he offered them, you offered to receive them; he said, he would have none; now he comes to offer: we produce you no new witnesses, nor offered nothing since Saturday was sought; if we come to witnesses again, we shall come to an aspersing one another; we shall make it a pretty endless work: we have done our parts, and followed the rules of justice; and Mr. Love hath had his full liberty to justify, to say what he could, and prove what he could for himself; if he neglect his own time, to his own peril be it; the court, I hope, will not be guilty of it, to alter the ways of justice.

*Love.* I could not compel witnesses, there was no subpoenas; but they must come when they offer themselves.

*Lord President.* You were asked, and you would produce none.

*Love.* They were not in a capacity to come, my lord.

*Att. Gen.* There is nothing resting more to be done, but now all being done (if you please, my lord, all being done) for the issue of the fact, all his Exceptions to the Impeachments, which are matters of law, we are now humbly craving your Judgment upon this impeachment between the Keepers of the Liberty of England, and master Love the prisoner at the bar. I now humbly demand your Judgment.

*Love.* I humbly pray, that since I never saw the face of this worthy gentleman till this morning, and so could have no particular advice from him, that there might be longer time allowed to this gentleman, and an addition of three gentlemen more, and a copy of the Charge.

*Att. Gen.* You have had more than ordinary prisoners have had before, I will assure you, Mr. Love.

*Lord President.* Mr. Hale, you have heard a little opened of our passages and proceedings, which you did not before, but every man else hath lift up his voice; you have gone over a great deal of the fact: now for matter of law, for that of misprision, that will rest, I think, in the judgment of the court; there is no misprision laid, but treason: and I think the court will find treason upon the proofs that are before them; they will not need to have any argument of misprision, if the court think there is sufficient treason laid; then that argument, we need not desire more time for that; and if it be misprision, that the court shall judge it so, then upon the matter there is no Charge against him for us to proceed upon; so that by that Charge, I cannot see what you can ground your argument upon.

..Mr. Hale. The Charge is not only for treason, but for treason and other high crimes and misdemeanors.

*Att. Gen.* But not Misprision.

Mr. Hale. Though the word be not in, we think it will reach it.

*Lord President.* It will not indeed.

*Att. Gen.* We insist upon it for the commonwealth, for the Charge is as it is laid.

*Lord President.* For the two next, so I told Mr. Love before, and he spent two hours at the least in recapitulating the evidence of the state, not any thing of his own, for he gave no witnesses; but he did go over the whole evidence of the state from point to point, and made, I think, himself (as he said) the exceptions that were made against them: these he went over, though we might have shut him up at the first. For him to sum up that which was the duty of the court, when he had no evidence, to sum up the evidence of the state, which we might not have let him: but this he did; and it is our part to examine the evidences, and the nature of them, and what the nature of the thing is, and how many witnesses are to every point; whether there be two witnesses to a point or no, cannot fall under dispute of law, it is matter of fact.

Mr. Hale. It is true, we are here only to do that duty which your lordship enjoins us to, my lord. It is true, for us to dispute whether this evidence proveth such a thing or no; haply it may not belong to us to do that. But thus far, if your lordship think fit, this may haply be allowable (with submission to the court), that is, whether, if the proofs be admitted, this man positively proves thus, the other man proves positively thus; whether that these two proofs do make a proof of one act? Haply, if your lordship shall think so fit, there may be somewhat of law in that; that is, whether it make a double testimony within the statute of 1 and 5. For, with submission to your lordship, the statute of 1 and 5 is not repealed as to point of testimony; it is repealed as to the place from whence the

trial is to come, but not in point of witnesses; therein it may come in, questionless, if your lordship shall think fit. But truly, I have not seen one word of the evidence from the beginning to the end: and if so be that any matter should rise, that the court should think fit as well as proper for me to offer in the defence of this gentleman, I must profess I cannot, unless I had seen the things; for I have not seen one word.

*Lord President.* For seeing the evidence further than memory, you, nor no man else ought to know, though we have given you leave to write; and therefore though we have given leave to take notice of them, yet that is more than ever any court did, or we need to have done, but only to trust to their own memories. But in that you speak of now, for you to have day to argue, when you are not able to say, nor we neither, that there is any such thing: did you ever hear such a thing, to pray day to argue, that you do not know positively it is so?

*Att. Gen.* We have spent a great deal of time, and all that can be said, will be to run a round; what is to be done, is your own consultation among yourselves.

*Lord President.* Withdraw your prisoner.

Love. I beseech you, allow me time for counsel.—(The Court adjourns.)

#### *The Sixth Day's Proceedings, July 5, 1651.*

There was but little said this day besides the Sentence. When Mr. Love appeared at the bar, the Attorney-General spake to the Court to this purpose: That there had been much time spent, and Mr. Love had had a fair Trial, and therefore he desired the court to proceed to Sentence. Upon which the Lord President spake to Mr. Love to this effect: That he had heard what the Attorney-General desired in the behalf of the commonwealth; and therefore demanded of Mr. Love what he had to say why Sentence should not be passed upon him? Mr. Love answered, that he had somewhat to say, and desired longer time, and more counsel to argue those matters of law contained in that Paper that he had formerly given in to the court: But the court would not yield to him in it. Then Mr. Love would have spoken further, but the Lord President told him, he would speak *ad populum*. Mr. Love answered, no, he would speak *ad magistratum*. But the court presently over-ruled him in it, and would not suffer him to speak. Then the Lord President told Mr. Love, that he had gone out of his place and calling in what he had done. Then speaking something about an elder, that an elder was one that was so, either in respect of his age, or in respect of his office, with some other things about Presbytery; and when he had done, he commanded the Clerk to read the sentence, which was in this manner: The Clerk read over the whole Charge, beginning thus: "Whereas Christopher Love, the prisoner at the bar, stands charged on the behalf of the keepers of the liberties of Eng-

head, &c. of High Treason, and other High Crimes and Offences, &c." [and so he read out as it is in the Charge; and ending thus] "For all which treasons and traitorous and wicked practices of him the said Christopher Love, this Court doth adjudge him to suffer the pains of death, by having his head severed from his body."

*Love*. My lord, I would speak a word.

*Lord President*. You cannot be heard now, Mr. Love.

*Love*. But a word, my lord, and it is this, in the words of the Apostle: "I have received the Sentence of death in myself, that should not trust in myself, but in God, which raiseth the dead." And, my lord, though you have condemned me, yet this I can say, that neither God nor my own conscience doth condemn me.

Mr. Love withdraws, and the Lieutenant of the Tower takes him into custody.

#### *Mr. Love's Execution.*

Mr. Love was ordered for execution the 15th of July \*, but by the favour of the Parliament it was respited till the 15th of August, and from thence to the 22d, during which time, (it is said) such application was made to Cromwell, that he granted him a Pardon †, but the express who brought it from Cromwell, then in the North, fell into the hands of some Cavaliers, before he arrived at London: and they, considering that Mr. Love had been a great incendiary, and had pursued the king's friends with great violence, detained the express, till the execution was over, which was on the said 22d of August.

Mr. Love was then brought from the Tower by the sheriffs of London to the scaffold on Tower-hill, about 2 o'clock in the afternoon.

\* "July 15. Mr. Love petitioned the Parliament, and divers other Petitions were presented on his behalf for pardon of his life; but after much debate upon the question, it passed in the negative. On the day appointed for his Execution, a Petition was presented by divers ministers in and about London, to the Parliament, "earnestly and in the bowels of Jesus Christ, who when we, were sinners died for us, if not totally to spare the life of our dear brother, that yet you would say of him, as Solomon of Abiathar, That at this time he should not be put to death." Upon this Petition the Parliament respited the Execution of Mr. Love for a month." Whitelocke.

† In Nichols's "Original Letters and Papers of State addressed to Oliver Cromwell," published at the end of the 7th vol. of Thurloe's State Papers, there are in pp. 66, 75, 84, two Letters from Geo. Bishope, and one from Sir Harry Vane to Cromwell, very bitter against Love and his associates. "To what end," asks Bishope, "serves all the providence of God in the field and at home, the blood cost and miseries of war, and the finger of God in bringing these designs to light, if so be such a malefactor as Mr. Love escape?"

The ministers that accompanied him were Mr. Ash, Mr. Calamy, and Mr. Manton. When he was upon the Scaffold, sheriff Tichburn shewed him the Warrant for his suffering, telling him, that he took no pleasure in this work, but it was a duty laid upon him.

*Love*. I believe it, Sir.

*Sheriff Tichburn*. I have done my duty for you.

*Love*. The Lord bless you!

*Lieut. of the Tower*. The Lord strengthen you in this hour of your temptation!

*Love*. Sir, I bless God my heart is in Heaven, I am well. Then turning to the sheriff Tichburn, said, May I have the liberty to speak and pray?

*Sheriff Tichburn*. Yes: But I desire you to consider, we have the other [meaning Mr. Gibbons] to execute afterwards, and 6 o'clock is our hour; but we will give you as much time as we can.

*Love*. I shall be the briefer. Then he put off his hat two several times to the people, and spake as followeth;

"Beloved Christians,

I am made this day a spectacle unto God, angels, and men: And among men, I am made a griel to the godly, a laughing-stock to the wicked, and a gazing-stock to all; yet blessed be God, not a terror to myself. Although there be but little between me and death: yet this bears up my heart, there is but little between me and Heaven. It comforted Dr. Taylor the martyr, when he was going to execution, that there were but two styles between him and his father's house: there is a lesser way between me and my father's house; but two steps between me and glory; it is but lying down upon the block, I shall ascend upon a throne. I am this day sailing towards the ocean of eternity, through a rough passage to my haven of rest; through a Red Sea to the promised land. Methinks I hear God say to me as he did to Moses, 'Go up to Mount Nebo and die there.' So to me, 'Go up to Tower-hill, and die there.' Isaac said of himself, that he was old, and yet he knew not the day of his death; but I cannot say so, I am young, and yet I know the day of my death, and I know the kind of my death, and the place of my death also. I am put to such a kind of death as two famous preachers of the gospel were put to before me, John the Baptist, and Paul the apostle, they were both beheaded; you have mention of the one in Scripture story, and of the other in ecclesiastical history. And I read in Rev. xx. 4. 'The Saints were beheld for the word of God, and for the testimony of Jesus.' But herein is the disadvantage which I lie under in the thoughts of many; they judge that I suffer not for the word of God, or for conscience, but for meddling with State matters. To this I shall briefly say; That it is an old guise of the devil, to impute the cause of God's people's sufferings, to be contrivements against the state, when in truth it is their



religion and conscience they are persecuted for: The rulers of Israel would have put Jeremy to death upon a civil account, though indeed it was only the truth of his prophecy that made the rulers angry with him; and yet upon a civil account they pretend he must die, because he fell away to the Chaldeans, and would have brought in foreign forces to invade them. The same thing is laid to my charge, of which I am as innocent as Jeremy was. Yea, I find other instances in Scripture, wherein the cause of the Saints' sufferings were still imputed to their meddling with state matters. Paul, though he did but preach Jesus Christ, yet he must die, if the people might have their will, under pretence that he was a mover of sedition. Upon a civil account my life is pretended to be taken away, whereas indeed it is because I pursue my Covenant, and will not prostitute my principles and conscience to the ambition and lusts of men. Beloved, I am this day making a double exchange, I am changing a pulpit for a scaffold, and a scaffold for a throne; and I might add a third, I am changing this numerous multitude, the presence of this numerous multitude on Tower-hill, for the innumerable company of Saints and angels in heaven, the Holy Hill of Zion; and I am changing a guard of soldiers for a guard of angels, which will receive me, and carry me into Abraham's bosom. This scaffold is the best pulpit that ever I preached in; in my church-pulpit, God through his grace made me an instrument to bring others to heaven; but in this pulpit he will bring me to heaven. These are the last words that I shall speak in this world, and it may be I shall bring more glory to God by this one speech on a scaffold, than I have done by many sermons in a pulpit.

"Before I lay down my neck upon the block, I shall lay open my cause unto the people, that hear me this day, that I might not die under all that obloquy and reproach that is cast upon me; and in doing it, I shall avoid all rancour, all bitterness of spirit, animosity and revenge; God is my record, whom I serve in the spirit; I speak the truth, and lye not; I do not bring a revengeful heart unto the scaffold. This day, before I came here, upon my bended knees I have begged mercy for them that denied mercy to me, and I have prayed God to forgive them who would not forgive me; I have forgiven from my heart the worst enemy I have in all the world; and this is the worst that I wish to my accusers and prosecutors, who have pursued my blood, that I might meet their souls in heaven.

"I shall divide my Speech into three Parts: I shall speak something concerning my Charge, and a word concerning my Accusers and touching my Judges, without any animosity at all; and then something concerning myself, for my own vindication, and then a word of exhortation, and so I shall commit my soul to God.

"Concerning my Charge, it is black and hideous, many things falsely suggested, hardly a line of it true, and nothing capital sufficiently proved against me by any one act that I am

conscious to myself I did. The Charge is high and full, but the proof empty and low; though there were eight witnesses that came in against me, yet none of them did prove that ever I wrote any letter, or directed any man to write a letter into Scotland, or into foreign parts; no man did prove that I sent away any letter, that I received any letter, that I collected or gave, or lent any money to assist or promote the Scottish war: This is all that is sworn against me, that I was present where letters were read, and that I made a motion for money to give to Massey; so that (beloved) my presence at, and concealment of letters that were received and sent from foreign parts, is that for which I must die.

"As concerning my Accusers, I shall not say much; I do forgive them with all my heart, and I pray God forgive them also. Yet what the Evangelist said concerning Christ's accusers, I may (without vanity or falsehood) say of mine, That they did not agree amongst themselves: one witness swears one thing, and another the quite contrary; yea, not only did they contradict one another, but sometimes a single witness contradicted himself. And though their testimony did condemn my person, yet I have condemned their testimony. And truly there are many remarkable circumstances that I might take notice of, either in, or before, or since the trial, that might be worthy observation; but I will not insist upon it, only in the general (for I shall name none of my accusers) some of them have sent to me, to pray me to forgive them the wrong they have done me: And one of them hath written to me under his own hand, to pray me to forgive him the wrong that he hath done me: and told me withal, that that day I should die a violent death, his life would be no comfort to him, because he was an instrument in taking away of mine. Others of the witnesses were some terrified before they would testify; some were hired, some fined before they would bear witness against me. But I will be off of this. As concerning my judges, I will not judge them, and yet I will not justify them: I will say but this of them, I believe that what moved Herod to cut off John Baptist's head, that moved them to cut off mine; and that was for his oath's sake: Herod, to avoid perjury, would commit murder; whereas if John's head had been upon his shoulders, he would have been guilty of neither.

"I have something in the second place to speak concerning myself, and then I shall come briefly to a conclusion. Concerning myself, I have gone through various reports; there are many sons of slander, whose mouths are as open sepulchres, in which they would bury my name, before my friends can bury my body; but my comfort is, there will be a resurrection of names as well as bodies at the last day; God will not only wipe off all tears from my eyes this day, but he will also wipe off all blots and reproaches from my name before many days be over; and though my body will soon rot under ground, yet my hope is my name will not rot

above it. I am not ignorant what calumnies are cast upon me, and more likely to be after I am dead and gone. The very night before my intended execution, the last month, there was an insulting letter written to me, to tell me, that after my death there should be something published against me to my shame. I hope you will have so much charity as not to believe reproaches cast upon a dead man, who will be silent in the grave, and not able to speak a word in his own justification. I am aspersed both as to my practice, and as to my principles. I shall begin with the first. There are five aspersions, as to my practice, that are laid upon me, That I am a liar, an extortioner, an adulterer, a murderer, and a turbulent person: crimes scandalous in any man, but much more abominable in a minister. Now I hope you will believe a dying man, who dares not look God in the face with a lie in his mouth; I am accused of lying, that what I denied before the High Court of Justice, that that afterwards I should confess, or else was proved against me. Now, in the presence of God I tell you, as I would confess nothing that was criminal, so I did deny nothing that was true; and that I may seal it to you with my blood, the same protestations I made before the High Court, I shall make briefly now. 1. That I never writ letter to the king, queen, church or state of Scotland, or to any particular person of the Scottish nation, since the wars began, to this day. 2. That I never received any letter writ to me, either from the king, or from the queen, or from the church or state of Scotland, or from any particular person of the Scottish nation, since the wars began, to this day. 3. That I never collected, gave or lent one penny of money, either to the king, queen, church, or state of Scotland, or to any particular person to send unto Scotland, to any person of the Scottish nation, to this day. It is true, I did confess, though it was not proved (and haply upon that ground the mistake might arise), I did give money to Massey, and I did also write a letter to him; but he is of the English, not of the Scottish nation. That for which I come here, is only for moving for money for him, and that not upon a military account, but merely to relieve his personal necessities, and for being present where letters were read from him and others. And although man hath condemned me, yet I am so far from thinking that either God or my own conscience condemns me, as sinning in what I am condemned for, that both God and my own conscience doth acquit me. And what I said at the bar, when I received my Sentence, that I shall say upon the scaffold, That for those things for which I am condemned, neither God nor my own conscience condemns me.

"Again, I am accused to be an extortioner; and this is in the mouths—I am loth to name them, because I would avoid all rancour: But I am charged as if I should be a grievous extortioner, to receive 30*l.* for the loan of 300*l.* besides 8*l.* per cent. for interest, which in the presence of God, and of you all, I do declare to

you, is a most notorious and abominable falsehood.

"I am accused likewise to be an adulterer, and this report is not in the mouths of mean men, but in the mouths of those that sit at the stern: As if I were a debauched person and were guilty of uncleanness. Now I tell you, as Luther said of himself in another case, that he was not tempted to covetousness; so through the grace of God I can say, I have not been tempted in all my life to uncleanness. It doth not much grieve me, though these slanders be cast upon me: I know my betters have been worse accused before me: Athanasius was accused by two harlots, that he had committed folly with them; and yet the man was chaste and innocent. Beza was charged not only with drunkenness, but with lasciviousness also; and many others have been accused with the same; if not with worse slanders than I have been.

"But (that which goeth nearest my heart) I am accused to be a murderer also; and this is a charge high indeed; I am charged with the guilt of all the blood of Scotland; whereas, did I lie under the guilt of one drop of blood, I could not look upon God with so cheerful a countenance, and I could not be filled with so peaceable a heart and conscience as I have at this day. I bless ify God, I am free from the blood of all men: Those who lay this to my charge, they do to me as Nero did to the Christians; He set Rome on fire, and then charged the Christians with it: So they put England and Scotland into a flame, and yet charge me with the guilt of that blood, who have poured forth tears to God night and day, to quench the burning which these men's ambitions and lusts have kindled: And I would fain know of any man what act is it that I have done? Or what is it that was proved in the High Court against me, that makes me guilty of Scotland's blood? Did I ever invite the Scots to invade England? What man doth lay that to my charge? Did I ever encourage the English army to invade Scotland? What action is it that I have done that makes me guilty of that blood; Indeed this I have done, and this I have, and this I do stand to; I have, as a private man, prayed unto God many a day, and kept many a fast, wherein I have sought God that there might be an agreement between the king and the Scots, upon the interest of religion and terms of the Covenant: Now, by what consequence can this be strained, to charge me with Scotland's blood? For my part, I was but only at one meeting where the question was proposed (fasts only excepted), what should be thought fit to be done to promote the agreement between the king and the Scots? and that was moved in my house: And to that end, when there were some things there proposed which they called a Commission or Instructions to send to Holland; as soon as ever I heard them, I did declare against them. I did declare that it was an act of high presumption for private persons to commissionate; an act of notorious falsehood, to say it was is

the name of the Presbyterian party, when none knew of it (that, I know of) but only those few then present. Now this is only a political engine to make the Presbyterian party odious, who are the best friends to a well-ordered government, of any sort of people in the world.

"I am accused likewise to be a man of a turbulent spirit, to be an enemy to the peace and quiet of the nation. Now, as to this, let my congregation and my domestical relations judge for me, whether I am not a man that would fain have lived quiet in the land: I am, as Jeremy was, 'born a man of contention;' not actively; I contend, I strive with none: But passively, many strive and contend with me. God is my witness, my judgment hath put me upon endeavouring after all honourable and just ways for peace and love among the godly. The grief of my heart hath been for the divisions, and the desire of my soul for an union among God's people. But when I speak of an union, I would not be misunderstood, I do not mean a state union, to engage to the present power, that is against my principles; that is to say, "A Confederacy with them that say, A Confederacy?" That is rather a combination, than a gospel union: O join not with them, lest ye be consumed in their sins; they who get power into their hands by policy, and use it with cruelty, will lose it with ignominy. It was said of pope Boniface, He did enter into the popedom like a fox, reigned like a lion, but died like a dog. Beloved, the union for which I plead, is a church union; to wit, love among the godly; for this the desires of my soul have ever been, that those that fear God might walk hand in hand in the fellowship of the gospel, both in truth and love: If this union be not, I am afraid, through our divisions, a company of loose libertines will arise, who will endeavour not only to overthrow the doctrine of faith, and the power of Godliness, but even good manners also. I remember an observation of holy Greenham's: giving his judgment upon the state of England, saith he, 'There is great fear that popery is coming into England, and I fear it too: But,' says he, 'I fear more the coming in of atheism into England, than the coming in of popery;' and truly, that is my fear also. Thus as to my practice: A word now as to my principles.

"I am accused to be an apostate, to be a turncoat, to be this to be that to be any thing but what I am: In the general, I will tell you, I bless my God, a High-Court, a long sword, a bloody scaffold, have not made me in the least to alter my principles, or to wrong my conscience: And that I might discover to you my principles, I hope I shall do it with freedom; I will irritate and provoke none: what I shall say, shall not be an irritation or provocation of others, at least not intended by me; but only as a genuine and clear manifestation of my own principles how they stand.

"First then, my principles, as to civil and religious affairs, I do declare that I die with my judgment set against malignity, I do hate

both name and thing; I still retain as vehement a detestation of a malignant interest as ever I did; yet I would not be misunderstood: I do not understand, nor count the godly party, our covenanting brethren in Scotland, to be a malignant party; nor the Scots defending their nation and title of their king to be a malignant interest, but an honest and justifiable cause.

"Secondly, Though I am against malignity yet I am not against, but for a regulated monarchy; a mixt monarchy, such as ours is, I judge to be the best government in the world: I did, it is true, in my place and calling, oppose the forces of the late king, but I was never against the office; I am not only against court-parasites, who would screw up monarchy into tyranny, but against those who pull down monarchy to bring in anarchy.

"Thirdly, I was never for putting the king to death, whose person I did promise in my covenant to preserve: it is true, I did in my place and calling oppose his forces, but I did never endeavour to destroy his person. There is a scandal raised of me that in a sermon at Windsor I should have these words, that "It would never be well with England, till the king were let blood in the neck vein:" which speech I utterly detest, professing, as a dying man, in the presence of God and of you all, I never spake such words as relating to him: though my judgment was for bringing malignants, who did seduce him and draw him from his parliament, to condign punishment; yet I deemed it an ill way to cure the body-politick, by cutting off the political head.

"Fourthly, I die with my judgment absolutely set against the Engagement; I pray God forgive them that impose and subscribe it, and preserve those that refuse it.

"Fifthly, I would not in the next place be looked upon, now I am a dying man as a man, owning this present government; I die with my judgment against it: It is true, in a case of life I did petition the present power, and did give them the titles they take to themselves, and that others give them; but herein I did not wrong nor thwart my principles; there are many instances in Scripture to justify this: Hushai did give the title of king to Absalom; though Absalom had no right to that title; for David was the lawful king: And David himself gave him that title as well as Hushai. And Calvin he gave the title to the French king, calling him "the most Christian king," yet we know he was a papist: And we gave a title to king Henry VIII, and call him "the Defender of the Faith," and yet he had no right to that title; for he was an opposer, not a defender of the faith; that title was given him upon an evil ground, because he opposed the faith; he opposed the doctrine of Luther, therefore the pope gave him that title, "the defender of the faith;" and yet none did scruple to give him that title that was then commonly given him.

"Sixthly, In the next place (I discover my  
S

judgment, I provoke none, only tell you what **my own** thoughts are, that so after I am dead and gone, I might not be belied, for I dare not now belie my principles, my judgment is against the invasion of the Scottish nation by the English army. They who gave us a friendly assistance, who are joined with us in the same Covenant, who drew a sword with us in the same quarrel, should I live a thousand years, I should never draw a sword against them; but the English army have forgot the brotherly Covenant: So that Scotland may say as Edom, "The men of my confederacy, who were at peace with me, have risen up and prevailed against me:" Because Scotland will not be a commonwealth, they shall not be a people; because they will not break Covenant, some men would have them broken: because they will not lay their consciences waste, their land must be laid waste.

"Lastly, And so I have done, (only with a word of exhortation) I die cleaving to all those oaths, vows, covenants, and protestations that were imposed by the two houses of parliament, as owning them, and dying with my judgment for them; to the protestation, the vow and covenant, the solemn league and covenant. And thus I tell you all, I had rather die a covenant-keeper, than live a covenant-breaker.

"I am now come to the third and last part of my Speech, and so I shall have done, and commit my soul to God who gave it. My Exhortation first shall be to this great city, unto the godly ministry of it, and unto my own congregation, from whom death parts me, which nothing else could.

"To the City I wish an affluence and continuance of all blessings upon it; and yet I fear greivous, as the sad symptoms of a declension, are here and there upon London, and yet she knows it not. O London, London, God is staining the pride of all thy glory. Thy glory is flying away like a bird; contempt of the ministry, opposition against the reformation, general apostacy, covenant-breaking have brought London low, and I fear will yet bring it lower; I tremble to think what evils are coming upon it: This city, it is the receptacle of all errors; that as your commodities are vented and spread from hence into every corner of the land, so have heresies and blasphemies had their first rise from this great and populous city, and from hence are spread into all countries.

"To the Inhabitants of this City I commend but these few particulars: First, let me beg you to love your painful and your godly ministers: If they be taken away, you are like to have worse come in their rooms. I know the Presbyterian ministers are the great eye-sore, who have formerly been counted the chariots and horsemen of Israel. But I will say of London (as was said of Leyden, 'That after Junius, an Orthodox minister, was taken away, Arminius, that pestilent Heretick, came in his room), If your godly ministers (and there have been ten already at one blow taken from

you), if they be taken away, Arminians, Anabaptists, nay Jesuits, are likely to supply their rooms, if God in mercy prevent not. 2. Submit yourselves to church-government; that would lay a curb and restraint upon your lusts: It is a golden and easy yoke, to which if you do not submit, God may lay a heavy and an iron yoke upon your necks. 3. Take heed of those doctrines that come under the notion of New Light: Those doctrines you ought to suspect, whether true, which the broachers of them say are new; for truth is as old as the bible. A remarkable passage I would suggest unto you, in Deut. xxxii. ver. 17. It is said there, 'They chose them new Gods that were newly come up;' and what were these new Gods? The next words tell you, they were old Devils; 'for they sacrificed to Devils and not to God.' Now their sacrificing to old Devils is called a 'sacrificing' (to deceive the people) 'to new Gods, that were newly come up;' yet their new Gods were but old Devils. Why, so I say, though many things go under the notion of New Light, yet they are but old Darkness, old heresies raked out of the dunghill, and which were buried in former ages of the church, with contempt and reproach, many hundred years ago. 4. Bewail your great loss which you have, in taking away so many ministers out of your city: there are ten ministers (if I mistake not) that have been taken away and removed at one blow, who were burning and shining lights in their several candlesticks, and bright stars in their several orbs; though I am not worthy of the world, and therefore am taken out of it; yet as for my suffering brethren, who are now in bonds and banishment, the world is not worthy of them. 5. Again, in the next place, take heed of engaging in a war against your brethren of the Scottish nation. For my part, I have opposed the tyranny of a king, but I never opposed the title. — Take heed what you do.

"I have something in the next place to speak to the godly Ministry of this City: Were it not that I am a dying man, I would not speak to such reverend and grave men; I would say as Elihu did (being but a young man), 'multitude of years should teach wisdom,' and I would hold my tongue; but the words of a dying man take, whether they be discreet or no; or so well ordered or managed, or no: As to them, I would first desire God to shew them mercy, who have begged mercy for me; now at the day of my death I would beg but this of them, that as they have not been ashamed of my chain, so they would now wax confident by my bonds, and by my blood. I know they are maligned and threatened, yet my prayer for them is that in Acts iv. 29. 'And now, O Lord, behold their threatnings, and grant that thy servants may preach thy word with all boldness.' Though I am but young, yet I will offer my young experience to my grave fathers and brethren, and that is this: Now I am to die, I have abundance of peace in my own conscience, that I have set myself

against the sins and apostacies of this present age. It is true, my faithfulness hath procured me ill-will from men, but it hath purchased me peace with God: I have lived in peace, and I shall die in peace: That which I have to beseech of the ministers is this, to beg them to keep up church-government; whatever God doth with the governments of the world, turning kingdoms upside down, yet the government of the church shall stand; and of all governments, I die with this persuasion, that the presbyterian government makes most for purity and unity throughout the churches of the saints. I would beg them therefore to keep up church-government, that they would not let their elderships fall, that they would take heed of too general admissions to the Lord's Supper, that they be not too prodigal of the blood of Christ, by too general admissions of men to the supper of the Lord, that sealing ordinance. And now I am speaking to them, I shall speak a word of them, and so I have done: I have heard many clamours since I came to prison, as if all the city-ministers were engaged in the plot (as it is called) that I am condemned for: Now, as a dying man, I tell you, that all the ministers that were present at the meetings, and had a hand in the business for which I am to be put to death, are either in prison, or they are discovered already; and therefore I do here, upon my death, see the ministers of the city, who are not yet in trouble, nor discovered to the Committee of Examinations; none of them had a hand in the business in which I was engaged; in which my conscience tells me, I have not sinned. I have done immediately, for I would fain be at my father's house.

"I have but a word to speak to my own Congregation; I return praises unto God, and thankfulness to them, for the love I have had from them; I found them a solid, judicious, and many of them a religious people. The ministry of that learned man, Mr. Anth. Burgess, did much good amongst them; though I have cause to be humbled, that my weak ministry did but a little. They afforded me a great deal of love, and a liberal maintenance; and this is all I desire of them, that they would choose a godly, learned, and orthodox minister to succeed, such an one as may keep up and carry on church-government: it would be a great comfort to me before I go to heaven, if I had but this persuasion, that a learned, orthodox, godly man should fill that pulpit. And for encouragement to any godly minister, whose lot may be to succeed me, I will say this, that he will have as comfortable a livelihood, and as loving a people, as are any people in London, a few only excepted: I had as much satisfaction among them as ever I had in any condition in all my life, and should never have parted from them, had not death now parted us; to which I do submit with all Christian meekness and cheerfulness, I am now drawing to an end of my speech, and to an end of my life together; but before I do expire my last

breath, I shall desire to justify God, and to condemn myself in all that is brought upon me. Here I come to that which you call an untimely end, and a shameful death; but (blessed be God) it is my glory, and it is my comfort: I shall justify God, he is righteous, because I have sinned; he is righteous, though he cut me off in the midst of my days, and in the midst of my ministry: I cannot complain that complaint in Psalm xlv. 12. 'Thou sellest thy people for nought, and dost not increase thy wealth by their price.' My blood it shall not be spilt for nought; I may do more good by my death, than by my life, and glorify God more in dying upon a scaffold, than if I had died of a disease upon my bed. I bless my God, I have not the least trouble upon my spirit; but I do with as much quietness of mind lie down (I hope I shall) upon the block, as if I were going to lie down upon my bed to take my rest. If men hunger after my flesh, and thirst after my blood, let them have it; it will hasten my happiness, and their ruin, and greaten their guiltiness: though I am a man of an obscure family, of mean parentage, so that my blood is not as the blood of kings, yet I will say it is a Christian's blood, a minister's blood, yea, it is innocent blood also: my body, my dead body, it will be a morsel, which I believe will hardly be digested, and my blood it will be had food for this infant-commonwealth (as Mr. Prideaux called it) to suck upon: mine is not malignant blood, though here I am brought as a grievous and notorious offender. Now, beloved, I shall not only justify God (as I do without a compliment; for he were very just, if my prison had been hell, and this scaffold the bottomless pit; I have deserved both; so that I do not only justify God) but I desire this day to magnify God, to magnify the riches of his glorious grace, that such an one as I, born in an obscure country (in Wales) of obscure parents, that God should look upon me, and single me out from amongst all my kindred, to be an object of his everlasting love; that when as the first 14 years of my life I never heard a Sermon, yet in the 15th year of my life God (through his grace) did convert me. And here I speak it without vanity (for what should a dying man be proud of?) though I am accused of many scandalous evils, yet (I speak to the praise and glory of my God) for these 20 years God hath kept me, that I have not fallen into any scandalous sin; I have laboured to keep a good conscience from my youth up, and I magnify his grace, that he hath not only made me a Christian, but a minister, and judged me faithful to put me into the ministry: and though the office be trodden upon and disgraced, yet it is my glory that I die a despised minister; I had rather be a preacher in a pulpit than a prince upon a throne; I had rather be an instrument to bring souls to heaven, than to have all the nations bring in tribute to me: I am not only a Christian and a Preacher, but whatever men judge, I am a martyr too, I speak it without vanity; would I have renounced my covenant, and debauched my con-

science, and ventured my soul, there might have been hopes of saving my life, that I should not have come to this place : but blessed be my God, I have made the best choice, I have chosen affliction rather than sin, and therefore welcome scaffold, and welcome ax, and welcome block, and welcome death, and welcome all, because it will send me to my father's house : I have great cause to magnify God's grace, that he hath stood by me during mine imprisonment ; it hath been a time of no little temptation to me, yet (blessed be his grace) he hath stood by me and strengthened me ; I magnify his grace, that though now I come to die a violent death, yet that death is not a terror to me ; through the blood of sprinkling, the fear of death is taken out of my heart ; God is not a terror to me, therefore death is not dreadful to me : I bless my God, I speak it without vanity, I have formerly had more fear in the drawing of a tooth, than now I have at the cutting off my head : I was for some five or six years under a spirit of bondage, and did fear death exceedingly ; but when the fear of death was upon me, death was not near me ; but now death is near me, the fear of it is far from me : and blessed be my Saviour that hath the sting of death in his own sides, and so makes the grave a bed of rest to me, and makes death (the last enemy) to be a friend, though he be a grim friend. Further, I bless my God, that though men have judged me to be cast out of the world, yet that God hath not cast me out of the hearts and prayers of his people ; I had rather be cast out of the world, than cast out of the hearts of godly men. Some think me (it is true) not worthy to live ; and yet others judge I do not deserve to die : but God will judge all, I will judge no man.

" I have now done, I have no more to say, but to desire the help of all your prayers, that God would give me the continuance and supply of divine grace to carry me through this great work that I am now about : that as I am to do a work I never did, so I may have a strength I never had : that I may put off this body with as much quietness and comfort of mind, as ever I put off my clothes to go to bed : and now I am to commend my soul to God, and to receive my fatal blow, I am comforted in this, ' Though men kill, they cannot damn me ; and though they thrust me out of the world, yet they cannot shut me out of heaven.' I am now going to my long home, and you are going to your short homes ; but I will tell you, I shall be at home before you ; I shall be at my father's house, before you will be at your own houses : I am now going to the heavenly Jerusalem, to the innumerable company of angels, to Jesus the mediator of the new covenant, to spirits of just men made perfect, and to God the judge of all ; ' in whose presence there is fulness of joy, and at whose right hand are pleasures for evermore.' I conclude with the Speech of the Apostle, 2 Tim. iv. 6, 7 : ' I am now to be offered up, and the time of my departure is at hand ; I

have finished my course, I have fought the good fight, I have kept the faith, henceforth there is a crown of righteousness laid up for me ; and not for me only, but for all them that love the appearing of our Lord Jesus Christ,' through whose blood, when my blood is shed, I expect remission of sins and eternal salvation. And so the Lord bless you all !"

Then turning to the Sheriff, he said, " May I pray ?"

Sheriff Titchburne. Yes, but consider the time.

Love. I have done, Sir. Then turning to the people, he said, " Beloved, I will but pray a little while with you, to commend my soul to God, and I have done." After which he prayed with an audible voice :

" Most glorious and eternal Majesty, thou art righteous and holy in all thou dost to the sons of men, though thou hast suffered men to condemn thy servant, thy servant will not condemn thee. He justifies thee, though thou cuttest him off in the midst of his days, and in the midst of his ministry, blessing thy glorious name, that though he be taken away from the land of the living, yet he is not blotted out of the book of the living : Father, my hour is come, thy poor creature can say without vanity and falsehood, He hath desired to glorify thee on earth, glorify thou now him in heaven ; he hath desired to bring the souls of other men to heaven, let his soul be brought to heaven. O thou blessed God, whom thy creature hath served, who hath made thee his hope, and his confidence from his youth ; forsake him not now he is drawing nigh to thee : Now he is in the valley of the shadow of death, Lord, be thou life to him : Smile thou upon him whilst men frown upon him : Lord, thou hast settled this persuasion in his heart, that as soon as ever the blow is given to divide his head from his body, he shall be united to his head in heaven ; blessed be God that thy servant dies in those hopes ; blessed be God, that thou hast filled the soul of thy servant with joy and peace in believing. O Lord, think upon that poor brother of mine, that is a companion in tribulation with me, who is this day to lose his life as well as I ; O fill him full of the joys of the Holy Ghost, when he is to give up the ghost. Lord, strengthen our hearts, that we may give up the ghost with joy and not with grief. We intreat thee, O Lord, think upon thy poor churches ; O that England might live in thy sight ! and O that London might be a faithful city to thee ! that righteousness might be among them ; that so peace and plenty might be within their walls, and prosperity within their habitations : Lord, heal the breaches of these nations, make England and Scotland as one staff in the Lord's hand, that Ephraim may not envy Judah, nor Judah vex Ephraim, but that both may fly upon the shoulders of the Philistines. O that men of the Protestant Religion, engaged in the same cause and covenant, might not delight to spill each others blood, but might engage against the common adversaries of our religion and liberty ! God shew

mercy to all that fear him : The Lord think upon our covenant-keeping brethren of the kingdom of Scotland, keep them faithful to thee, and let not them that have invaded them, overspread their whole land. Prevent the shedding of more Christian blood, if it seem good in thine eyes. God shew mercy to thy poor servant who is here now giving up the ghost : O blessed Jesus, apply thy blood, not only for my justification unto life; but also for my comfort, for the quieting of my soul, that so I may be in the joys of heaven before I come to the possession of heaven. Hear the prayers of all thy people that have been made for thy servant; and though thou hast denied prayer as to that particular request concerning my life; yet let herein the fruits of prayer be seen, that thou wilt bear up my heart against the fear of death. God shew mercy to all that fear him, and shew mercy to all who have engaged for the life of thy servant; let them have mercy at the day of their appearing before Jesus Christ. Preserve thou a godly ministry in this nation, and restore a godly magistracy, and cause yet good days to be the heritage of thy people, for the Lord's sake. Now Lord, into thy hands thy servant commits his spirit; and though he may not with Stephen, see the heavens open, yet let him have the heavens open; and though he may not see upon a scaffold the Son of God standing at the right hand of God, yet let him come to the glorious body of Jesus Christ, and this hour have an intellectual sight of the glorious body of his Saviour. Lord Jesus receive my spirit, and Lord Jesus stand by me thy dying servant, who hath endeavoured in his life time to stand for thee: Lord hear, pardon all infirmities, wash away his iniquity by the blood of Christ, wipe off reproaches from his name, wipe off guilt from his person, and receive him pure, and spotless, and blameless before thee in love. And all this we beg for the sake of Jesus Christ: Amen and Amen."

His Prayers being ended, Mr. Ash said, You make a Christian end, I hope.

Love. Ay, I bless God.

Then turning to Mr. Sheriff Tichburn, he said, "I thank you for this kindness, you have expressed a great deal of kindness for me. Well, I go from a block to the bosom of my Saviour."

Love. Where is the Executioner?

When the Executioner came forward, he said, Art thou the Officer?

Executioner. Yes.

Love. (Lifting up his eyes) O blessed Jesus, that hath kept me from the hurt of death! O blessed be God! blessed be God!

Then taking leave of the Ministers, he said, The Lord be with you all!

And taking leave of Sheriff Tichburn, he kissed his hand; then kneeling down, he made a short prayer privately.

Rising up he said, "Blessed be God, I am full of joy and peace in believing: I lie down with a world of comfort; as if I were to lie down in my bed: my bed is but a short sleep,

and this death is a long sleep, where I shall rest in Abraham's bosom, and in the embraces of the Lord Jesus."

And then saying, "The Lord bless you!" he laid himself down upon the scaffold with his head over the block; and, when he stretched forth his hands, the Executioner cut off his head at one blow.

"I know," says Heath, "some scruple will be made against these persons, [Love and Gibbons] as Presbyterians and sufferers upon another account than of the fifth commandment, as having their own, and the king's interest interwoven with it; but all things considered, without much reconciliation of the different opinions; in this case we may venture to register, and enroll them in this Martyrology. For without all doubt, the bottom of their design was the king's restoration, and however it was clogged with sives and conditions for themselves and their party (which abates something of the lustre, though not of the worth of this crown) yet the main was loyalty, which they hoped to vindicate and evince to the world, who had hard thoughts of them in the matter of the king's death in the previous method thereunto.

"This confederation was therefore begun just upon the conclusion of that horrid murder, that what they could not remedy in that, they might compensate in this, and by a timely application to his present majesty, redeem themselves into his good opinion and favour, forfeited by their former aversness to their duty towards him.

"To this purpose, most of the eminent ministers of that way in London, had several meetings and conferences: in consultation and debate of the manner of their proceeding in this affair. Among them Mr. Love appeared to be most active and stirring, whether out of conscience of some unyarrantable, undutiful demeanour towards the king during the war, I take not upon me to determine. The rest were Mr. Jenkins, Mr. Robinson, Dr. Drake, Mr. Watson, and others. Of the lay-part captain Titus, Mr. Potter, an apothecary in Black-friars, Mr. Gibbons, and some else. These held intelligence both with the king and the parliament of Scotland, then not agreed, but in expectation of a treaty, which was the first thing endeavoured by these men here to be promoted, and with desired effect concluded.

"Their chief meeting-place was Mr. Love's, where their intelligence was communicated, letters read, and advice given upon the several emergencies of that business; which proceeded so far, that the king and his subjects of Scotland, having ended the treaty, and his majesty arrived in Scotland, whether Cromwell with the English army was also advanced, and had worsted the Kirk's army at Dunbar; they concluded of raising an army in this kingdom to the assistance of that nation, and the recovery of this from the slavery and tyranny it suffered under.

"This passed through so many hands, engaged in it, and was so publicly owned, that the Council of State had very early notice of the whole design, so that they dained most part of the while in the net; information being given of every day's proceedings, and of what additions or accessions of persons to the design which soon after, when they had let it run as far, as without danger they might trust it, they drew the curtain, and apprehended most of the aforesaid persons, and brought them to trial before a high court of Justice, which was yet standing, and had not yet put off their blood-died robes, in expectation of this grand contrivance, which should make them farther work."

"Mr. Love being one of the chief, was first tried, afterwards some others, who repented and humbly besought the parliament's mercy as Mr. Jenkins and Potter, but Mr. Love's submission (such as it was, for they required confession and discovery too) came too late, and to no purpose; so that he, and this Mr. Gibbons a taylor, was condemned by that high court for the same business, lost their heads o Tower-hill, as aforesaid."

Lord Clarendon mentions the Execution of Love thus: "Scotland being subdued, and Ireland reduced to that obedience as the parliament could wish, nothing could be expected to be done in England for the king's advantage. From the time that Cromwell was chosen general in the place of Fairfax, he took all occasions to discountenance the Presbyterians, and to put them out of all trust and employment, as well in the country as in the army; and, whilst he was in Scotland, he had intercepted some letters from one Love, a Presbyterian minister in London (a fellow who hath been mentioned before, in the time the treaty was at Uxbridge, for preaching against peace) to a feyding preacher in Scotland; and sent such an information against him, with so many successive insinuations that justice might be exemplarily done upon him, that, in spite of all the opposition which the Presbyterians could make, who appeared publicly

with their utmost power, the man was condemned and executed upon Tower-hill. And to shew their impartiality, about the same time they executed Brown Bushel, who had formerly served the parliament in the beginning of the rebellion, and shortly after served the king to the end of the war, and had lived some years in England after the war expired, untaken notice of, but upon this occasion, was evidently discovered, and put to death."

"It is a wonderful thing what operation this Presbyterian spirit had upon the minds of those who were possessed by it. This poor man Love, who had been guilty of as much treason against the king, from the beginning of the rebellion, as the pulpit could contain, was so much without remorse for any wickedness of that kind that he had committed, that he was jealous of nothing so much, as of being suspected to repent; or that he was brought to suffer for his affection to the king. And therefore when he was upon the scaffold, where he appeared with a marvellous undauntedness, he seemed so much delighted with the memory of all that he had done against the late king, and against the bishops, that he could not even then forbear to speak with animosity and bitterness against both, and expressed great satisfaction in mind for what he had done against them, and was as much transported with the inward joy of mind, that he felt in being brought thither to die as a martyr, and to give testimony for the covenant; 'Whatsoever he had done in the pursuit of the ends,' he said, 'of that sanctified obligation, to which he was in mind by his conscience engaged.' And in this saying fit, without so much as praying for the king, otherwise than that he might propagate the Covenant, he laid his head upon the block with as much courage as the bravest and holiest man could do in the most pious occasion."

"Mr. Love, together with one Mr. Gibbons, offered death together on Tower Hill at the earnest suit of Cromwell, protesting he would not march into Scotland unless they were cut off." History of Independency, part 4. p. 17.

### 189. The Trial of Mr. JOHN GIBBONS, before the High Court of Justice, for High Treason: 3 CHARLES II. A. D. 1651.

POTTER and Gibbons were both brought to the bar together. Potter's Charge was first read, unto which he pleaded Guilty, and made a large narrative of all his crimes against the state: very much was he examined against Master Gibbons, but no hurt at all he did him. After they had done with him, the Charge of master Gibbons was read; which when he heard he spake in this manner:

*Gibbons.* My Lord, this Charge is very new to me; I have been a prisoner under close imprisonment for many weeks together, and never knew before this time what it was, in parti-

cular, that was laid to my Charge: And now I do hear my particular accusation, it is so strange to me, that I do not know what to say to it at the first hearing; therefore I humbly beseech your lordship that I may hear it read again.

*Att. Gen.* (Mr. Prideaux.) My Lord, Master Gibbons heard Potter's Charge read, which was very like to his own; so he hath heard it twice already: however, my lord, he may hear it read again; for he may hear it thrice.

*Ld. President Keble.* Come let him hear it again; he is a young man, let him have what



favour he may have : mark it well, now you hear it again.

After reading, Master Gibbons spake in this manner :

*Gibbons.* My Lord, I am brought hither by an Order of this Court, which Order mentions a Charge of Treason exhibited against me ; I should betray the liberty I am born unto, if I should not desire a trial, according to the fundamental laws of this nation, which is by a jury of my neighbourhood : the benefits and advantages are exceeding great, therefore I do earnestly crave to have them.

*Keble.* The State hath thought of another way of trial, which you must have, and submit to ; this is best for your advantage, and more honourable, than any other you can have, therefore you must plead Guilty or Not Guilty.

*Gibbons.* My Lord, I shall never be so proual of my blood, as to throw away my life by refusing a trial before you, though I am not satisfied in this new way of trial ; yet I shall not refuse to plead up confidence of my own innocency, and in hope of your tenderness in matters of blood. But before I plead, and answer to my charge, I have this humble motion to make.

Here he spake very much on the first day of his trial, moving very much for counsel ; but after he had used many arguments to persuade the court to incline to it, and could not have it, he desired the court to be the counsel for him, and take care of his life, and not suffer him by his own ignorance to weave a web for his own ruin and destruction. After much said of this nature, he pleaded Not Guilty : the which being entered in the book, they proceeded to Trial.

*Att. Gen.* The Attorney-General began with a long speech, how Master Gibbons had plotted and contrived these treasons ; named the meetings and the places where he said it began presently after the late king's death, under the pretence of getting the king to Scotland ; but the truth was, they intended to settle him upon this commonwealth. And further, That he the said John Gibbons, as a false Traitor, and out of a malicious and wicked purpose and design to raise insurrections in this nation, did several days and times in the years 1643, 49, 50, and 51, and at divers other times and places within this commonwealth, together with Christopher Love, Piercy, Jermin, Massey, &c. and other their complices, being false traitors to this commonwealth, traitorously, maliciously, complot, contrive and endeavour to raise forces against this commonwealth, settled in way of a free state, without King or House of Lords : and for the subversion of the same, did raise and collect divers great sums of money, and did hold intelligence by letters, messages and instructions, with Charles Stuart, son of the late king, and with the queen his mother, and divers other persons, being false traitors to this commonwealth.

And further, he the said John Gibbons, together with Christopher Love, William Drake,

Piercy, Jermin, &c. and other their complices, since the death of the late king, several days and times in the years aforesaid, within this commonwealth of England, and elsewhere, did traitorously and maliciously declare, publish, and promote Charles Stuart, son of the late king, commonly called the prince of Wales, to be king of England, meaning of this commonwealth.

And further to carry on the said Design, he the said John Gibbons several days and times in the respective years aforesaid, together with Christopher Love, William Drake, Piercy, &c. did endeavour to procure the Scots to invade this commonwealth of England.

And further, That he the said John Gibbons on the 6th of April, 1650, and on divers other days and times between the 29th day of March, 1650, and the 1st day of June, 1651, at London, and elsewhere, did give, use, and hold correspondence with the said Charles Stuart, son of the late king, and the queen his mother, Jermin, Piercy, &c.

And further, to accomplish the said Designs, he the said John Gibbons, on the 6th day of April, 1651, at the places aforementioned, did hold and give correspondence and intelligence with divers persons of the Scottish nation, as Argyle, Lowdon, Lothian, &c. enemies to this commonwealth, and adhering to the king in the war against them.

And further the said John Gibbons did traitorously and maliciously abet, assist, countenance, and encourage the Scottish nation, and divers other persons adhering to them ; and did convey great sums of money, arms, and ammunition into Scotland, and elsewhere. All which wicked practices and designs of him the said John Gibbons were against this commonwealth, parliament, and people ; and in manifest contempt of the Laws of this nation, and acts of parliament, in such cases made and provided.

[After he had ended, the Witnesses were called : The first was major Adams ; the second col. Batton ; the third was capt. Hatsel ; the fourth col. Burre ; the fifth major Alford ; the sixth capt. Far ; the seventh was master Jaquel ; the eighth was major Huntington ; the ninth master Harvey ; the tenth was major Corbet. Adams being first examined, his testimony was to this effect.]

#### *Adams's Testimony.*

That the correspondence of John Gibbons with the rest aforesaid, was to endeavour an agreement between the king and the Scots. The first meeting was at the Swan in Fish-streer, where Master Gibbons was. At that place there was only a consideration how to carry on the correspondence. There was also a petition to be sent to the king (as I was informed) ; and the meeting in this place was in reference to that also. There was letters written to Scotland, and some received thence ; which Mr. Gibbons was privy to. After Master Drake went away, we met at Master Love's

house, where Master Gibbons met also. There were letters read; and I think Master Gibbons did hear them, and did confer about them. The letters sent to Jermin, Piercy, &c. at one time or other Master Gibbons was present, and heard them read. This was before Titus's going away. Then after there were letters sent from the king, which were read at Master Love's house; where Master Gibbons was present, and heard them read. Master Gibbons brought likewise a rough draught of the instructions that were to go to Holland. Also there was a Letter read at Mr. Love's from alderman Bunce, where Master Gibbons was present. Also a letter after Dunbar fight from Scotland, relating how affairs stood there, (and that letter, as I now remember, was for arms and money) was read at Master Love's house; where Master Gibbons was present at the reading of it. Master Gibbons was a constant man at all meetings. A letter was sent from Massey, read at Master Love's, for arms and money: Master Gibbons was present. And three or four hundred pounds agreed to be sent. A letter was written to the estates of Scotland, to procure Massey and the English to be in esteem. Master Gibbons sometimes acquainted me where we were to meet.

*Lieutenant-Colonel Baine's Testimony.*

A little while after the death of the late king, there was a meeting at the Swan at Dowgate, where several persons were: but whether Mr. Gibbons was there, I know not. But captain Titus was there, and gave a large commendation of the young prince; and moved that a petition might be drawn up, and sent to the prince from the Presbyterian party here. There was a debate upon it: and this design was looked upon as the only visible way to preserve the Presbyterian Party, and to bring the prince to the crown.

*Colonel Barton's Testimony.*

A while after the death of the late king I was going into Cannon-Street, and at Dowgate I met with William Drake, who desired me to meet him at the Swan at Dowgate. When I came there, I found captain Titus, lieutenant-colonel Baines, and divers other persons: I believe Mr. Gibbons was not there. I came in while they were in discourse, and I could not well hear them. But at their rising, I asked Mr. Drake what was the occasion of their meeting; and he told me that captain Titus had given a good report of the prince, and did desire that some addresses might be made to him, that thereby he might be taken off from his cavaliering counsellors. After a while William Drake came to me for 10*l.* which he said was to furnish a friend of his which did want 100*l.* He desired I would not deny him; and because he was a good customer to my house, I did lend it him. And after I heard it was for captain Titus. As for the prisoner, I think he was not at the Swan at Dowgate; for I did not know him till afterwards.

*Major Alford's Testimony.*

At the meeting at the Swan at Dowgate, where divers were, captain Titus made a large narration of the prince's deportment, declaring how inclinable he was to cast off his cavaliering adherents, if he were but assured there was a people in England that stuck to their covenant; he was weary of his other counsels, and was ready to apply himself to the ends of the covenant.—A Petition was brought to the Bear in Bread-Street, where it was read, and debated among us, and agreed to be drawn up; and captain Titus and Drake were sent away with it.—I do not remember that Master Gibbons was at either of these meetings.—There was money raised for Titus: Drake had 10*l.* of me; he had it in private. Captain Titus had 30*l.* for his journey. He went over twice, I think; and if so, the second time Master Gibbons was there. The second time I saw Master Gibbons, he brought me to his chamber; and the third time he and I went with some papers to Gravesend, agreed on at Master Love's. These papers were either a commission, or instructions, or both together in one. But this was the substance, that the lord Willoughby, and others, should go to the treaty at Breckda, and to press the king concerning this Agreement with Scotland.—Master Gibbons was at Master Love's house when the commission and instructions were agreed upon. He and I went to Gravesend; and (I think) he carried the papers. But of this I am sure, that he knew the end of our going. We tarried there all night; and delivered the papers to Mr. Mason.—I did go to Colais when I came back; but I do not know whether the papers that I brought over (being read at Master Love's house) were read all at one time, or not: If they were, then Master Gibbons was there.—I was present when the letters came, after Dunbar fight, at Mr. Love's. The letters came from colonel Massey: they gave an account of the fight there, and of the state of affairs: and withal, writ for money and arms, to be sent by way of Holland. I cannot say Mr. Gibbons was present. There was money agreed upon there to be raised for Massey and Titus. Mr. Gibbons was many times at the Swan at Dowgate; he was constant at the club. But after Mr. Drake fled, we did take in other men into the club: Mr. Gibbons was as little absent as any man.—Mr. Gibbons did put me upon it: to shew friendship to Mr. Mason; and he gave me this reason, that so, Mr. Mason might represent our good affections to the king: and Mr. Gibbons did desire me to defray the charges of that night's expences at Gravesend; where Mr. Mason was telling me, that if I were not allowed it by our friends, he would do it.

*Master Harvey's Testimony.*

I came to the knowledge of this design at several meetings and places. Mr. Gibbons told me of 2,000*l.* which was to be sent into Scotland; and that Massey was to land forces in the West: And concerning my lord general's

soldiers, that many of them were run away. And concerning the trained bands of the North, he said they waited but for one blow to be given in Scotland. He told me also of a town that was to be delivered.

*Major Huntington's Testimony.*

The first that made me acquainted with this design was Mr. Gibbons: who told me, that if I would come to Mr. Love's house, I should hear the news. I went to Mr. Love's: "An when I came there, that which I heard was: paper sent from Massey, Graves, and Titus brought by Drake, and read by him. Mr. Gibbons was there then: There was many more there in Mr. Love's closet; but I cannot say well who they were.

[The Testimonies of the rest of the witnesses could not be well heard; neither can they be had, the books being so close kept. After all was ended, Mr. Keble desired Master Gibbons to speak for himself.]

*Gibbons.* My lord, I have now stood here near five hours, and am both spent in my body and spirit; and that I am as unable in body to speak for myself, as I am disabled to make my Defence without the Court grant me time, a copy of my Charge, the Depositions of the Witnesses, and assign me counsel. And therefore, before I plead or answer to my Charge, I have this humble motion to make, (I being a man altogether ignorant and unacquainted with the laws), That this court would be pleased, as I said before, to assign me counsel to advise me in my chamber, and to plead for me in the court; and that your lordship and this Court would be pleased to give me a copy of my Charge, and to assign me a solicitor, to solicit my business for me.

*Keble.* Mr. Gibbons, you must proceed to make some general Defence for the present.

*Gibbons.* My lord, I hope you will do as God use to do, allow some grains of allowance, that a man that hath nothing but weakness and ignorance may help himself.

Upon this motion the Court adjourned, and Mr. Gibbons was taken away by the keeper of Newgate; and thereafter came a warrant to bring him to the bar the Wednesday following.

In the mean time there were several friends that went to mediate and speak for him to the Judge, who did lay out his simplicity and innocence, labouring what they could for the saving of his life. The Judge answered, That he was not so simple as he was set out by them; and that he doubted not but he was a servant to greater persons, who had employed him: But if he would be ingenuous, and discover the parties that were in that design, he would labour to save his life, and do him good; but if he would not confess, he could not help him. Yet still they interceded for him, until at last the Judge told one of them, That verily he was persuaded that he was innocent: But nevertheless, if he did not reveal all those whom he knew to have any knowledge of the business

VOL. V.

besides himself, nothing could be expected but death. He was extremely desirous to have a discovery of some persons of quality: But Mr. Gibbons constantly affirmed he knew of none; neither would he accuse any; for he had rather die than be a means to scandal or hazard any good man. This he constantly affirmed with an undaunted resolution to the last.

*Wednesday, the second Day's Trial, July 23.*

Master Gibbons being brought before the court, my lord Keble spake as followeth:

*Keble.* Master Gibbons, the Court out of abundance of favour to you, have given you time from Friday till now, whereby you may be able to make your Defence: Therefore it is now expected you shall proceed, and plead what you have to say.

*Gibbons.* My lord, the last time I was before this honourable Court, after I had desired a jury, and was denied it, I did, in confidence of my own innocence, and your tenderness in matters of blood, submit to a trial, though I was no way satisfied in this new way of trial: But before I could plead, I made this humble motion, perceiving the charge against me for high treason, was against several statutes, laws, and acts of parliament, which I never saw, heard, or read them in my life. My life and estate being thus drawn into question, my lord, it did very much concern me to be well advised, there being many things in the statutes which made for my advantage, both in my plea and defence; Therefore I did humbly beseech your lordship and this High Court that I might have counsel in law assigned me, both to advise me in my chamber, and plead for me in this court, that so I might be able to take all those lawful advantages which the statutes and acts of parliament afford me; which I was not able to do myself, being ignorant of the laws. This being denied, and I seeing I could no way obtain counsel to preserve my life, as I did see the state had got great counsel against me, to prosecute me for my life; I did humbly beseech your lordship, and this High Court, that you would be so far off counsel for me, a poor prisoner standing at the bar, drawn in question before the justice for my life, that you would not let the learned counsel of this commonwealth take any advantage against me, through my ignorance or want of skill in the laws; but that if the statutes and acts of parliament, and laws of the land, did afford me any advantage, which I might overlook through my ignorance, that your lordship and the Court, out of your bowels of compassion to a poor prisoner, would stand for me, that I might not have wrong done, nor law denied me, which by right was due unto me. Upon these considerations, my lord, I did plead Not Guilty. I do humbly thank your lordship and the Court for the time you have given me; but am as unable to answer or speak for myself now, as I was the last time I took my leave of this Court, being wholly unfurnished, and altogether disenabled to make my Defence: For when I came back

T

to my prison at Newgate, with an expectation of meeting both the copy of my Charge, and the deposition of the witnesses; I found all was taken away from my notary, whom I brought on purpose to this place to help me therein. Seeing myself thus totally deprived and cut off from all helps and hopes of making my Defence, I could not tell whether to go or send, but to your lordship, whom I thought, upon my humble petition, might have granted both a copy of my Charge, and the Depositions of the Witnesses. But seeing that could not be granted, I am left without all possibilities of pleading, or making any Defence. Therefore I again, with all humility, address myself to your lordship and this honourable Court, and do most earnestly desire a copy of the Charge, also the Depositions of Witnesses, and counsel assigned me to come to my chamber to advise me there; also counsel to plead for me before this Court, and a solicitor assigned me, to follow my business. And if God shall not incline your hearts to shew this mercy, I do not look upon myself as able to make my Defence, as to stand before a company of armed men.

*Keble.* The Court will be very tender of your blood; and they must and will be as tender to preserve the blood of the Commonwealth, in execution of justice upon traitors, that seek to destroy them. You have had a great deal of favour, and time given you; therefore now you must make your Defence.

*Gibbons.* My lord, if ever prisoner that came before this Court had reason to cry and call for all possible helps and advantages that may be allowed them, much more have I cause to do the same; verily believing never until now there was ever any brought before justice so unable to help or answer for himself, as I am. Therefore I humbly beseech your lordship, and this High Court; and I do with all earnestly desire counsel, a copy of my Charge, the Depositions of the Witnesses, without which I am never able to plead, or make any Defence for my life: And the rather am I moved to crave and desire the same, for that I have both heard and seen precedents before mine eyes of this nature. Major Rolfe, that was accused for High Treason, and counsel assigned him; by whose assistance he saved his life. Sir John Gell, before this Court of Justice, had his brother Master Gell, to speak for him. And since, Mr. Love had counsel to plead for him in this very place.

*Keble.* Mr. Gibbons, you will not be denied counsel, or any thing else, that may help you, if there be found matter or law. Go on, and make your Defence; and make it appear to the Court that there is matter of law, and you shall not be denied counsel, and whatever else may do you good.

*Gibbons.* My lord, had I the several advantages the others have had, to offer such matters of law, I should be as ready as any else to do it: but being deprived of all these helps by the officers of the Court, who took away the book

from my notary, after he had written the Charge; therefore, my lord, without a copy of the Charge, and the Depositions of the Witnesses, it will be in vain for me to trouble this honourable Court, when I never had sight of the Charge, nor Depositions of the Witnesses; the want of which have so disabled me, (seeing I could not have help of counsel to advise me) that I cannot tell what in the world to say myself.

*Keble.* Mr. Gibbons, you must proceed to plead, or else you will trouble the Court more than you are aware of: for you to stand out thus, and plead for that which cannot be granted, will do you no good; therefore I advise you no longer to stand out, but make your Defence.

*Gibbons.* My lord, if I should begin to proceed, and make my Defence, being, as I said already, totally ignorant of all the laws, and utterly unable both in memory and parts to take all just and clear objections against the advantages of the Charge and evidences; if I should make my Defence when all means are thus taken away, I should certainly throw away my own life, and become guilty of shedding my own blood: Therefore I had rather a hundred times, leave myself to the mercy and justice of the Court, who, I hope, are very sensible how much the life of a man is worth; and will consider the hard measure I had in taking away the books of those that wrote for me, that so I could never have sight of the Charge, nor Depositions of the Witnesses, which all others have had, nor no counsel to advise me. Thus being left naked and destitute of all helps, I had rather submit to the mercy of the Court, than ever plead to save my life. My lord, I am persuaded I stand to be judged by a Court, where I see the faces of those that truly fear God; and that they will seriously weigh and consider that the blood of any for whom Christ hath died, is exceeding precious in the sight of God, who will not take any advantage against any for their ignorance; and that you also do remember that all your judgments will be judged over again at the tribunal of Christ, who will both be a counsel and advocate for me, prisoner now standing at the bar. Thus hoping that you will reckon the life and blood of the meanest person, for whom Christ hath died, as much worth as the life of the greatest, I will rather submit to your mercy than plead, if I cannot have what I do desire. But being very unwilling to have any hand to destroy myself, and so become guilty of my own death, therefore though for want of help I be not able to make my Defence, yet I shall make an appeal to the Court; which is all I can do. And therefore I desire you seriously to weigh and consider how far short the evidences come, and how full of contrarieties and contradictions. By the law there ought to be two lawful and sufficient witnesses to make a man guilty of treason; These witnesses must agree punctually in their testimony, and the treason they prove must be against the express words of the act. Also the law will not suffer those that are guilty and con-

vict of the same crime by their confessions, whereof they accuse me, to give evidence against me: These witnesses therefore cannot be lawful and sufficient against me, they having confessed thus much against themselves, and so do either witness against me out of fear of death, or promise of reward. This I am certainly informed will be proved against major Adams, and was declared in the face of the Court at Mr. Love's Trial, concerning the testimony of major Adams, which is the most material witness against me. I hope your lordship and the Court will look upon it, as not only he hath been offered, received, and taken money to discover the design, and witness against me; but also in regard to whatsoever he swears, as that I should bring in the rough draught of Instructions to Mr. Love's: And as to my presence at the Swan at several meetings, was both contradicted, and positively sworn against by several other of the witnesses. None but he doth say that I was present at the reading of any letters of the fight at Dunbar; nor none but Adams saith I was present at Mr. Love's house, when any moneys was debated: nor none but Adams saith I was a constant man at meetings; that ever I invited any to a meeting. I hope your lordship and the Court will consider, that though there are ten witnesses produced against me, besides several questions asked captain Potter at the bar concerning me, yet many of them neither said nor swore any thing that touched me at all, and of those that do reach me in their testimony, not any two did agree in proving the same fact. As concerning the particular testimony of Mr. Harvey, unto which no one witness but himself either said or swore the least title of it to be true; being struck with wonder, and amazed to hear these things given in against me, which my heart never thought, nor my tongue never spake: I do both before your lordship and this High Court, and presence of all the people, lay it before the righteous God to plead my cause, and judge between me, a prisoner at the bar, and Mr. Harvey, that falsely accused me. I did further desire, that this appeal might be set upon record, and met me before the tribunal seat of Christ, and that both your lordship, and them that sit in this honourable Court, might follow this my appeal to the judgment seat, and there witness it before the presence of the Lord against me when I am pleading for mercy, if ever I spake or heard of these things which he hath accused me of. My lord, I shall go further, and did offer unto the court, that if in all England they could find a man that could say any of these things Mr. Harvey accused me of, then I said more particularly, if any whom I had most frequently conversed withal, or any of those that kept me company, would say they ever heard me say any of these words, the next time I came before this honourable Court, I would come and plead guilty. And I do now say, if it please your lordship and the Court to give me time, I shall be able to produce witnesses, I

shall make it appear Mr. Harvey is as unfit to be a witness in any Court of Record, as he was unfit to be a justice of peace in Essex, where he was indicted for many and notorious offences. If I might have time, I should produce witnesses that Mr. Harvey was the original reporter of some of those things he accused me of. And concerning major Corbet's testimony, I know little in it, but that I shall call God to witness I knew not Mason. I did then in the face of the Court declare how much he had wronged me; for that I had acquainted the committee who examined me, that I both knew Mason, and told them the place, and how I came to know him. Besides, there is a copy of my examination abroad that doth confirm the same, that Corbet came to me more like a murderer than a Christian; and because I did call God to witness against these untruths he charged me withal, he did in effect judge my soul to the devil, and my body to the gallows, and so he left me. For which unchristian carriage of his, I both complained to Mr. Price, clerk to the warden in the Fleet, my keeper, and some others. My lord, I am charged with being a solicitor, and represented as a man that had nothing else to do but follow such businesses as here I am accused of; which is a life so unlike an Englishman, and so ill-becoming a Christian, that I have all the days of my life walked a contrary course: If it were necessary, multitudes of witnesses will testify the same for me. I was entertained by my master to wait upon him in his chamber: After he was gone to the house, I had constant occasions to go into the city, either to lay out, pay, or receive money. So much experience had I gained, as I entered upon a merchant's trade, dealt with many and several merchantable commodities; having a wife and children then living, that was the trade I resolved to follow. My wife dying, I went over to France some little time after with my master, and carried many merchantable commodities with me, where I found liberty to increase my experience. My master returning to England, where he staid not a year, but went back again into France, I was left behind to wait upon my lady. My employment in my lady's service is sufficiently known to be such as daily led me to go into the city. The 19th of July 1650, my lady went from the city; there was a necessity one man she must leave behind in London, which fell to my portion. And my business called me daily into the city; sometimes to go to counsel, sometimes to shew bills of exchange, sometimes to pay monies, sometimes to lay out money, and buy several things which both my master and lady did daily send for to me: There was some letters that came constantly every week from my lady, some out of France, to one Mr. Charboner's, whose house was in Tower-Street. I missing these letters often on the Monday, went on the Tuesday for them, which was the day we met at the club, which was the main reason of my being so constantly there. Where I met for no other end than to

see the faces of my friends, and to discourse of the news of the town. Most of whatever I heard there discoursed on, I found in the printed books: Nothing do I know was ever said or done there prejudicial to the State. But since it is looked upon as a crime, I would I had never come there. Concerning my master, were it necessary, I would here make a declaration that he never left me to do any business but to wait upon his lady, and to provide, buy, and send those things into France that were necessary for him. For letters, I never received any from him, but such as might have looked all the world in the face; neither, think I, I need say much to clear this, for that the state have seen most of those letters that my master sent, before they ever came to my hands. My lords, this is all I can say, being unwilling to trouble the court any longer; but must declare how much I am amazed to be indicted by so high a charge of treason, as I dare say never looked any such man as I am, in my condition, in the face till now; and do fully persuade myself that your lordship will rather pity my ignorance and sad condition, than look upon me as a man either fit for plots, or any such matter I am charged with. I do protest, that if I would make a declaration of every act I have done, of every word I have said, of every line I have written, I never knew it came up to the border of treason, whatever is laid to my charge. And whereas major Adams charges me of being at several meetings presently after the late king's death, I did not see them in nine months after the death of the king; and after that, I came acquainted with Alford, and all that he lays to my charge is going down to Gravesend, but he did not say whether he or I carried the commissions or letters he speaks of. It is hard for me to remember what the discourse was a year and a half since, but I dare say he doth most falsely charge me that I should bid him shew kindness to Mason, that so he might represent the Presbyterian party considerable to the king; and that I should bid him disburse some money, and pay all the charges, and it was not paid him by the company again, I would; this, to the best of my remembrance, is all false. Capt. Far, who is another of the witnesses, who went along with me, and Alford, did declare in the face of the court, that he knew no such thing, and that major Alford was the man that invited him to Gravesend; and so I do protest he did me, or else I had never gone.

For letters, I do not remember that ever I touched any; nor did major Alford in the least swear positively I did; only he saith, either he or I did deliver them. Alford doth not swear that ever I wrote, that ever I saw them opened, or ever heard them read. All this, my lord, was done above a year and a half ago; and I hope if there shall be any thing found done amiss in that journey, the acts will clear me; for that it is said, if a man be not indicted within a year, he is not to be arraigned or questioned.

All that major Huntington says, is, he saw me at master Love's when the Instructions were read, but whether I heard them, he could not swear; but he saw me go out of one room into another; and since he says, I met him in the street, and asked him if he would not go to Mr. Love's to hear news; and when we came there, after prayer half an hour, Will. Drake pulled a letter out of his pocket, neither swore he what it was, nor that I heard it read. My lord, upon the whole, I do say, among all the ten witnesses, there is not one that doth say or swear that ever I wrote letter, sent letter, or received letter; that I ever collected money, paid money, or received money; or that ever I discoursed any thing prejudicial to the state; not any one witness doth lay any one thing to my charge done for more than this year and half, besides major Adams: and all that ever he swears, is, being present at letters read; he neither says I heard them, or ever discoursed any thing concerning them. So, my lord, except it be one single witness, there is nothing laid to my charge done this year and a half. So, my lord, the utmost that the whole proof against me doth amount unto, is but hearing of letters read at the second hand; and all this but in the utmost were but misprision of treason; if fully proved; but being but one single witness to swear this, I cannot imagine it will ever hurt me. For Potter, Jaquel, Far, or Alford, (who knew as much by me as Adams) did not say any such thing; and all that Adams did say, is but hearing of letters, he doth not say that ever I sent means to the king: though I never did this, yet I have weakened myself, and opened my purse to help the State. About the time the king and Scots were agreed, I furnished my brother with a considerable sum of money, and sent him into Ireland to be the State service, where he gained a command under my lord, and did very good service for the state. My lord, had I ever such a mind to the war in Scotland, I could have sent my brother thither, and not into Ireland. Thus, my lord, I have gone as far as I can, in making my appeal to the court; being utterly unable to make any Defence, I hope there will be no advantage taken by my ignorance, but you will be pleased to take my condition into your consideration, and yet grant me both time and counsel, and give me a copy of my Charge, and the Depositions of the Witnesses, which is no more favour than was allowed to the archbishop of Canterbury, and deputy of Ireland; I crave leave of your lordship and the Court, that I may not suffer for want of experience, nor that my ignorance may be made use of to work my ruin and destruction. From my youth I have studied the Scripture, but never have studied the laws in my life; and therefore all that I have to help myself with, is from the Scripture, where I find that ignorance hath constantly the plea at the bar of Heaven, and so I am certain should have at all the bars of all the courts of justice. Abimelech that

committed a very great sin in taking another man's wife from him, he pleaded his ignorance, and God did spare him, because he knew it not. God hath always been wonderful tender of the life of a man, and that in the time of the most strict laws; so much care did he take to preserve the life of man, that he provided cities of refuge to fly unto, if any killed a man by accident, or unawares. Murder is a great crying sin, yet were it done unawares, God made a city of refuge to fly unto, that the man might be safe, and out of danger of the revenger. My lord, whatever I have done amiss, I do profess it is out of ignorance; I never knew I broke any of the acts of parliament, nor that I offended the laws of England; and therefore I hope my ignorance shall have the plea at your bar, as I am sure it shall have at the bar of God. I have often heard that the law of England is the law of mercy, and that there is no law in the world looks with more tenderness and compassion upon a man's life; therefore I say as David concerning the sword of Goliath, 'There is none like that, give it me.' The same I do say this day, no law is like to our English laws, therefore let me enjoy them: I know the benefits and advantages thereby is wonderful great. I do verily believe I am before a court that are fully persuaded that the strict beholding eye of God looks upon them, and beholds all your intentions, and the thoughts of your heart towards me, and sees whether you do deny me any help or advantage that may save my life. Therefore I earnestly beseech your lordship, and this honourable court, to look upon the laws of England, and see whether there be not some helps, some city of refuge to fly unto, where I may be out of danger of all that I am here charged with. My lord, this is the first time that ever I was brought upon a stage, the first time that ever my name was heard of, or I known to be an offender against the State: And whatsoever shall now be found in me amiss, I desire there may be a favourable construction made of it, and not to be strained beyond what my intention was, who have always abhorred from my very soul all designs that have tended to blood. I have always stood firm to the cause of liberty and religion, and all the interests thereof: these are the principles I first took up, these are the principles I have always held; from which principles I never yet departed. I have always had a bleeding heart when the church hath been in a suffering condition; I have never been of a bitter spirit, but have always carried a most tender and Christian respect towards those that were of an unblamable life and conversation: And where I thought there was truth of grace, however contrary to me in judgment, yet I have loved them, and embraced them as Christians. I have always lived peaceably, never no disturber of the church or state, either by writing, or printing books, or any thing else. May it please your lordship, it is my desire you should do as God did, when the cry of Sodom came up before him; \* I will

'go down,' saith he, 'and see whether they have done altogether according to the cry which is come up to me: if not, I will know.' The Lord that knows all things, knew before what Sodom had done: but after the manner of men he came down, to teach all courts of what they should do before they proceed to judgment. My lord, here hath been a great charge against me, a great cry come up unto your ears; I desire you to do as God did, that is, to know whether it be according to the cry, that you would seriously weigh all that the witnesses have said, gather all the circumstances together, and see the utmost that it doth amount unto: and when I am sure you will see the evidences to come so infinite short of what the charge and cry hath been against me, that you will find arguments to incline to mercy; and if I might not be quitted, yet at least you will let me have those helps and advantages that the laws afford me, and God hath commanded you to give me; that you will not keep any thing from me, that I, according to justice, have demanded, and for the want of which see me destroyed before your faces. Therefore I do once more with all earnestness desire you will not deny me a copy of my Charge, also the Depositions of the Witnesses, and assign me Counsel to come to my chamber, and plead for me at the bar, without which you take from me all those helps that should enable me to make my Defence; without which it is impossible for me to go any further, and must declare that I want all the material things that should help me to save my life, when I see before my eyes all possible advantages to undo me. My lord, I am able to say no more: if this my just request, shall be denied, I have gone as far as I can without them, both to clear my innocency, and vindicate myself from that which is laid to my charge; and am most confident, if you would let me have what you cannot justly deny me, a copy of my Charge, and the Depositions of the Witnesses, I should stand as clear in the eyes of the law, in the eyes of your lordship, and all this Court, as I am clear in the eyes of God, and my own conscience, from what is unjustly charged upon me. And thus much I have done, and am able to do no more; therefore if you do deny me, I shall be abundantly satisfied, howsoever it shall please God to suffer you to deal with me. Concerning the witnesses, I have little further to say, but desire that the Lord would forgive them, as I do freely; I would not change conditions with them, though I were sure to die in fire flaming, or in the mouth of lions, even in the worst condition that could be imagined. I both pity and desire to mourn for them, who have so desperately wounded their own souls and consciences to destroy my life. And the Lord grant, that not one drop of my blood, which they have endeavoured to shed, may stand betwixt them and mercy, when they are upon their dying beds a crying for it. And this is the worst hurt I wish them for all the wrong they have done me. Now the Lord of

heaven direct your lordship, and this honourable Court, that you may not suffer the witnesses testimonies to be strained, for me to lose my life upon circumstances, or what is supposed to be, or in conscience thought, but according to clear proof and evidence. Do that which may give you comfort upon a dying bed, and no more than you dare look God in the face withal, and answer to me his poor servant, who am innocent, at the bar of the Lord Jesus Christ, where I shall have free liberty to speak, and you must and shall hear me. The Lord of heaven direct you, that you do no more than what the law will allow; and that what you do, may be according to the mind of God, and most for his glory, and the good of me a helpless prisoner at the bar. And so let it go which way it will, I shall submit with abundance of content and satisfaction, and with a quiet spirit say, 'The will of the Lord be done.'

Thus having ended his Speech, the Court adjourned until Friday next; and so Mr. Gibbons was carried back by his Keeper, and ordered to be brought before them again on Friday after.

Friday, about twelve o'clock, Mr. Gibbons was brought to the bar.

*Keble.* Come, Mr. Gibbons, what have you to say?

*Gibbons.* My lord, I have not much to say, being totally disenabled, and cut off from these means that might help me to save my life; which the last time I was here, I fully declared, and as earnestly desired both a copy of my Charge, and the Depositions of the Witnesses, and counsel assigned me: this I pleaded for, until your lordship told me the court would be incensed, if I did not proceed to my Defence. Which made me dare to go no further, but rather choose to submit to the mercy of the Court, and make an appeal to their justice; where I desired that you would seriously weigh and consider how wonderful short the whole evidences come; there was not any two agreeing: Adams, the material witness, most what he said, was disproved by the other several witnesses that came after. I hope the court is very sensible how little is laid to my charge by major Adams; after so great an equivocation, as he daily set upon me, moving of me to his house in the city, to his house in the country, going from one shop to another, where he thought I did come; to Alderman's try church, and all other places where he did hope to find me: after all this striving, and trying, what was it he got out? nothing, but the hearing of letters read, which none of himself swears. My lord, all that I have to say, is to desire both your lordship, and this court, to consider with what great aggravation the Attorney-General did multiply, and aggravate against me beyond all that ever the witnesses said, leaving out all what might serve for my advantage. My lord, how the Attorney-General could bring major Alford and major Adams together, and so make them double witnesses against me, that is not

possible for me or any man else to understand. First, what Adams says, is concerning of my bringing in of the rough draught of Instructions, which I wholly deny, and so do all the witnesses that came after him, to the best of my remembrance: and some of them swear positively that Drake brought it in; none but himself says that I brought it in. To testify unto this, major Alford says nothing: but all that he says, is, That I went down to Gravesend with him, and did not say or swear that I either carried the Instructions, or delivered them, or that ever I heard them read: all that he can say, is, that I went with them, but whether he or I delivered them, that he cannot tell. He speaks of some discourse concerning shewing of kindness to Mason; it being a year and half ago, I am unable to charge myself with what I said then, but dare say he hath falsely accused me. What major Alford says more, is only that I should bring them to Mason's chamber in the Strand, delivered not, nor says that we had any discourse at all, but took our leaves, and came away presently. Another time, said Alford, I brought Mason to Titus to Mr. Whitari's bookseller's, and that Mason and Titus went up to the chamber, where they had private discourse together: he did not say, that I went up to the chamber, or heard, or knew any thing what their discourse was. Now, my lord, I hope by this time both your lordship and the court are satisfied what slender testimony there is against me. First, my lord, I was never heard of till I came to Gravesend with major Alford; only something that major Adams saith of me, meeting at the Swan, which all the other witnesses do acquit and clear me from. Now, my lord, to what major Alford saith, is nothing but giving a visit to Titus and Mason, which I hope will never be thought any crime; for that neither of them both were declared enemies to the State, and therefore certainly it could be no hurt for me to see them. And besides, whatever major Alford charges me withal, is a year and half since, therefore am acquitted by your own acts. So that it cannot enter into my thoughts, by what act of parliament or law you can pass any sentence against me: for all that is ever laid to my charge done within this year, is nothing but hearing of letters read: which not any one but major Adams says, and he neither saith what these letters were, and that I ever dreamed, or said any thing concerning them. Thus, my lord, you see there is but one single witness throughout. My lord, I waited upon a gentleman that led me to two or three meetings, by which means I gained a nearer acquaintance, which now proves part of my unhappiness, seeing it is become a crime to meet friends at the club, and other places, and hear letters, and other news read, which is all that I am charged with. My lord, I hope I am before a court that doth consider, that all these days works will be judged over again; therefore I cannot imagine that any court of justice in the world will proceed to sentence upon so slender a testimony that lies



before you, but that you will rather allow me those helps that may enable me to end the difference that is betwixt the State and me: that is, to let me have a copy of my Charge, the Depositions of the Witnesses, and counsel assigned me; without which, it is as impossible to defend myself, as for a little child to encounter an armed man with a drawn sword in his hand. My lord, I have no more to say, but shall submit to God, whatsoever comes; and as I said before, so I say again, I do freely forgive the witnesses, but do desire that the Court will not proceed upon so slight and slender testimonies, which never can, nor will hold water in the sight of God, or law.

*Keble.* Mr. Gibbons, most of what you have said now, you said before, only you made some little addition. The Court hath debated your business and life, with as much care as if you were the greatest nobleman in England; and upon the debate, they are persuaded in their consciences that you deserve to be sentenced.

*Att. Gen.* My lord, Mr. Gibbons pleads for his life, and I for Justice in the behalf of the Commonwealth, therefore I desire you will proceed to Sentence according to the judgment of the Court.

Whereupon Sentence was read. After that, all the whole Charge was read, and Mr. Gibbons sentenced as a false traitor, to return to that place from whence he came, so to suffer death, by having his head severed from his body.

After Sentence, Keble spake in this manner. "Mr. Gibbons, you have nothing to do, but to prepare yourself for God; you have a great acquaintance among the ministers, you should do very well to send for them, and reveal what you know, and so do the State what good you can before you die. Have you any thing more to say?" But Mr. Gibbons said not one word more, but took his leave of the Court, humbly bowing to them; and after that, he bowed to the Attorney-General, and took his leave of him, and so came down the stairs with abundance of cheerfulness, speaking to his friends, and shaking them by the hands. And in this manner he went along the Hall, until he took coach to go to prison.

#### *Mr. Gibbons's Execution.*

He was afterwards executed, in pursuance of the Sentence, on Tower-Hill, the same day with Mr. Love, the 22d of August. Being come upon the Scaffold, he spoke in the following manner:

"Gentlemen; I am brought here to the stage, where I am made a spectacle to God, to angels, and to men; an object of pity and compassion to my friends, where they see before their eyes a man in the prime of his years and in the flower of his youth cut off as an untimely fruit, and as a tree that burdeneth the ground, therefore they are sorry; but this is no new thing, it is God's ordinary way to suffer men to be cast out, that he may receive them to mercy; the poor blind man was thrown out, but he was

received to Jesus Christ; the three children were thrown into the furnace, but they were received to God; that was the way that he delivered them: do not stand wondering at God's proceedings, whatsoever the men be, yet I bless God to eternity; I take it well at his hands, though it seem strange: it is God's ordinary way, and if it be, Christians should not shun any extremity, if it bring them to Jesus Christ, and therefore I bless God, I come to this scaffold, to this place, with as much willingness as ever bridegroom did to receive his bride: I know the passage of blood is but short, and the way to the crown; though my head be severed from my body, yet my soul to all eternity shall be joined to the Lord Jesus Christ; and I in the presence of you all, desire you to witness, that I from my soul desire that the present power and court that is set up, have done themselves no more hurt than they have done me; for I am assured that all that ever their sentence hath done, hath put me in the way that I am going; from earth to heaven, from friends, and comfort, and creature-relations, that of necessity ere-long must be left; and it were a great deal of folly to desire that that we cannot keep; I am going to receive the end of my faith, the reward of my hope, the comfort of my prayers, and of all the prayers, and tears of God's people; where I shall enjoy the society of all believers, the sight of God, the fellowship of the saints, and embrace God to all eternity; these things none can take from me; therefore why should I desire to keep these things that the providence of God calls for? And therefore I need not stand grumbling and repining at God's will; and I freely submit.

"I come not hither to tell a long story, or to make a discovery of my sins; the Lord knows (upon the examination of my heart) how many thousands and hundred millions of sins I have, and I desire to pour out floods of tears for them; and I desire that through the merit of Christ, the atonement might be made to God for them. From my childhood I must needs say, I have been such; I have seen a father buried in the grave, and a sister, and a wife, and a child laid in the grave; but all that ever I could do to this day, could never put my sins into the grave, with all my endeavours and all the afflictions and mercies I have had: it is an infinite comfort, though I enjoy nothing else; after this day I shall assuredly never sin any more, nor grieve the spirit of God any more, nor dishonour God any more; I profess, though I should not come to heaven, it is a comfort to me that I shall not sin and grieve the spirit of God any more; blessed be God to all eternity, I shall be out of the power of sin.

"This is not all, but further, since I can remember that I set my face towards God; from my childhood I have hedged in my way with thorns, that I might go the strictest and straitest way, my way to bring me to the Lord Jesus Christ; it is a wonderful comfort, and blessed be God for this day's work; I profess

I would not change my condition for ten thousand worlds : I bless God I find the reward and benefit of the prayers of good people in a wonderful manner ; they have more cause to go home and seek days of rejoicing and days of praise, than to mourn and repine. In the Bishops' time I was one that was a mourner, that lamented the time and the state, and desired to shed tears when the church was under affliction.

"And truly, I further declare, that I have always been and gone upon gospel principles ; I have always desired to apply particular promises to my particular condition : I know ten thousand generals will do me no good, only particular faith and application will do me good and strengthen and support me this day : I have always engaged upon pure principles of religion to the best of my knowledge, and the utmost of my endeavours ; I have always engaged upon those principles, from those I never departed ; and in those principles by God's grace this day I shall die and come to seal with my blood ; I always owned the ways of God, when they were most persecuted ; I think an hundred, nay (I may say) a thousand can tell, that I did never dare to save my life, or my skin, or any thing, to quit religion, though it were never so much clouded, and despised, and disdained ; I do now this day rather a thousand times willingly lay my neck on the block ; believe it, I am a dying man, I chuse it, and had rather have it, than enjoy the most glorious life and liberty with those that are betrayers of the truth of God and a good conscience ; O Sirs, believe it, carry it from a dying man : in the time of afflictions a good conscience will stand you in more stead, and more comfort, than a thousand worlds : I bless God more that he now smiles on me, than if all the emperors and princes of the world did own me.

"I have never been without a trembling heart, since the spouse of Christ was clothed in mourning ; I always thought it my duty, and the least I could do, to be in tears when the church rolled in blood ; and the Lord grant that every Christian soul may make it his work : it is the great breaking of my heart, that I could never get my heart to break enough, to see the church of Christ in misery : though God have called, and Christ have called, and there was never such calling ; it wounds my soul that I could never mourn more for the church's afflictions, and the Lord keep all that fear the Lord and his name, keep those from days of rejoicing and thanksgiving for the death of those that God owns, and will wipe all tears from their eyes, and those God accounts their blood precious : have a care of being of the number of those that rejoice over the heaps of the carcasses of God's people.

"I am now at the last brought to suffer death as an enemy to the State, though my conscience tells me I am a friend to the Lord Jesus Christ, his church and members ; and though the Jews heretofore told Pilate, if he did let the Lord

Christ go, he was no friend to Cæsar : must I not say truly, my conscience bids me say it in the case I am in, whosoever desires to keep the Lord Jesus, to keep integrity of heart, and innocency of life, and desires to walk in an unspotted life and conversation, whosoever desires to let these old broached heresies go, and draw their sword for Christ, are not these declared to be enemies to the State, and are against them that desire to keep a good conscience ; and if there be no law of God to condemn us, (as the Jews said) there is a law found out, and by that law he ought to die.

"I will not make a discourse of the manner of my Trial ; ten thousand men, and angels, yea God himself can witness the hard measure I had. I am in charity with all the world, the Lord of heaven forgive them ; I say nothing myself, only I will tell you what a gentleman said that was an eye-witness at my trial, that knows all the actions and laws as well as a y man in the place ; he professeth that he saw so much, that he would not have a hand in my Sentence for all the gold that could be in Westminster-Hall. I must say for mine own part, and in my conscience I believe it, if they do not repent, the Lord will call them to an account for this day's work, I believe they have gone against God, and his laws, and the laws of nations ; I believe so, I speak not this from a bitter spirit ; the Lord of heaven forgive all them that ever had a hand in it, as now I shall desire mercy which I shall come before the Lord ; I look upon them as a company of poor instruments that the Lord knows how to deal with, and will call to account ; it will be time enough when they come to lie upon their dying beds : the Lord grant that my blood may not stand between them and mercy when they put up their prayers, that nothing concerning me may stand in the way of all the mercy that their souls shall stand in need of : truly, if you will believe me, I would not leave this scaffold to enjoy all the pleasures that this world can give, I would not change my condition with them ; not with my witnesses, not with my judges I would not change my condition ; my conscience tells me, and so I speak, I forgive them, the Lord of heaven lay not this great sin to their charge ; let all the people of God so pray ; they will one day see what it is to lose a good conscience ; and that it is better a great deal to have the light of God's countenance, than to have a conscience upon the rack : they will one day see, that there is nothing to be feared but sin and wrath ; and what a comfort and happiness the peace of a good conscience is, the Lord shew it you.

"I am brought here to die for Treason ; so complotting against the state : and this is such a treason as is proclaimed to all the world ; such a plot as was never before : blessed be God, I am of another mind ; I should appear sadly before God, if my conscience told me what hath been represented : but I must needs declare my opinion without offence to any ; it is a pretended plot, to begot a greater plot :

God grant that it be not so; a plot, I fear, to destroy all church-government, and the faithful of the Lord and the godly: for other plots I understand none; I profess in the presence of God I know of no plot, or had a hand in any plot: I would not for ten thousand worlds be guilty of the blood of any man: I am sensible how many thousands, and ten thousand thousands of sins I have committed, as the number of minutes of one hundred thousand thousands of days; that I am sensible of, and desire to bring them before the Lord to stone them to death, and to pour out floods of tears for them before this that I am to die: but I am put now to appeal to the righteous God, whither I am going, to stand before the bar of an imperial judge, that knows the intents and thoughts of my heart, and what all my endeavours have been, I never had any other thought than the honour of the gospel and religion, and to bring these precious things into the channels that the Lord would have them in. This was my desire.

“Not long since I told a gentleman (now in heaven) that so great is the wound that it breaks my heart, to see the wonderful scorn and contempt that lies on the face of religion in the eyes of Papists, Turks and Heathens, and all reformed nations, that I profess I have sometimes wished to have swummed out of my chamber in tears, and said to the gentleman, that it was a mercy if ever the Lord would find a means to wash away this stain of scorn and contempt of the gospel, though it were with the blood of his ministers and faithful servants: who knows what this day's work may do? who knows what God hath for this land? Let none despise the day of small things; if it be clay and spittle, if God take it in his hand, it shall cure the blind: what do we know what the blood of two men may do to fill up the measure of blood? What the blood of two men may do towards all the prayers and endeavours of God's people? Therefore be not troubled. But I pray give me leave: whatsoever is written concerning me, or the blessed servant of God who is gone before me, and now singing Hallelujahs to all eternity, this day's work will be written in heaven, it will be written by the Lord Jesus: suffering for God and religion, confident I am you will find it so. I can look in the face of God (excepting my weakness and failings) that in all this business I had no ill intention: you are to believe a dying man: I am sensible what it is to die to God, to the ocean of eternity; to go to stand at his bar: believe me, believe me; I profess before God, angels and men, I know not what I die for this day: whatever reports do say, believe the words of a dying man: I am confident the odium of this day's work (were an angel of heaven to write a book) will never be washed off; that this day's work will lie upon some: O Lord grant they may see their sin, and repent in time.

“But let me say a little further: I confess I cannot but wonder, how the men now in power

can look any Christian in the face, my conscience tells me, that it is the original of all plots, that hath torn the nation asunder, and the kingdom, and the liberty, and the profits asunder: whatsoever belongs to Christians and rational men, is all torn from us; have they not thrown the three kingdoms into that misery, that I am confident all the enemies of the church could not have done the like? But rather how shall they be able to look the great God in the face, when he shall make inquisition for blood? To whose door shall all the blood of England, and Scotland, and Ireland return? Who knows not, that within these three years there was the most glorious promising morning that ever looked England in the face? How comes it to pass that we have such days of trouble and misery? God knows who hath had a hand and been instruments in it. He knows that these are the plotters with a witness: these are the Egyptians that all the people of God groan under:

[Then the People interrupted him, and some said ‘He is a going to die with a lye in his Mouth, Mr. Sheriff.’ When they were thus he went on thus:]

“I must needs say, that the blood that was shed in queen Mary's days was a delightful sight and persecution, and it was a pleasant sight to Antichrist in the Bishops time, and there have been many delightful sights of late that I will not speak of, because it gives offence, but the most joyful sight that ever Antichrist saw, he beholds this day in the blood of the faithful ministers and servants of God: and now I come upon the scaffold to fight this bloody field, the Lord grant I may be enabled to overcome it.

“I confess, I believe it is a sad sight to the people of God, to see all their prayer-, fastings, and tears come to this, to see the piercing sword thrust into their bowels; but I desire them to take heed of repining and murmuring: look who stands on the top of the ladder, and not on the next step; see God ordering and contriving all; look not at the hammer, but God; God is the best contriver, he knows what is the best for you, and us, and blessed be his name; I am come hither to witness of his glory, there is none knows what glory a suffering condition brings to God, and to his saints, how many flowers it adds to their garland, we should see as many run to it, as now shun it. When Christ shall come, and all shall cail to the mountains and rocks to fall on them and cover them, what a blessed sight will it be for Christ to put forth his hand to them? If they saw but the infinite reward Christ hath for them in heaven, it would be sufficient to invite them to come in and suffer for the Lord; nay we may be ashamed we have done no more, nor looked after the gaining of that precious eternal mansion, where we shall see God, and be in the arms of Jesus Christ, where we shall suffer no more, but enjoy an infinite weight of beatitude and glory.

"Let the word of a dying man prevail; for the Lord's sake hold to the Truth, part not from the truth; it were better that Heaven should fall, and the world be on fire, than that God should be dishonoured. The least error is as a barrel of gun-powder that will blow up the church and kingdom; Error draws a sword against Christ and his truth; take heed of error, lest you fall into a gulf that you can never come out of. Ask your own experience, how many ministers and professors have fallen into error, and have gone away with guilt upon their conscience, and a blot upon their names: Error is like a chain, if the soul would go to Christ, it cannot: Error is as a purgation, under what gloss soever it comes: though in the habit of a saint or angel, it is dangerous poison; be like Athanasius, own the truth, though all the world were against it; or as Martin Luther, who set himself against all the power and force of Antichrist: own the truth, though eminent ministers and professors that seem eminent in faith and grace fall from it, as many do.

"I shall now suddenly conclude: I am very unwilling in my condition to speak any thing that may be offensive to any, I have only this to say, and I have done; whatsoever chaungeth me nearest, I am confident the Lord will one day clear my innocence; he hath written down the actions and proceedings, and he will one day shew it, and vindicate my name in the sight of all; there will be a resurrection, and all men shall be called to an account for all the reproaches that have been cast upon the faithful of the Lord.

"All the churches of Christ are now in the furnace; the church of Scotland, England, and Ireland; the Lord grant that all may mourn, and never dare to keep a joyful day, till the church of Christ be delivered; for God calls, and Christ calls, and the church calls; and I had rather be (and let all that fear God chuse rather to be) in the den of Dragons, than to be of the number of those that rejoice when the churches of God are in sorrow. The sun shined upon Sodom a little while, but presently a shower of fire and brimstone came and destroyed them all; so the prosperity and flourishing state of the wicked is like that: the children of God may sit in darkness for a while, but they shall have light to eternity: wicked men may rejoice for a moment, but there is an eternal night that will follow, that shall never be blown over: A child of God had rather that all the lions in the wilderness should roar, than to have God angry. What were it for a man, though like Alexander, he had prosperity, and had as much peace and glory as Pompey, and did ride in as much state as Cæsar, when he is under the frowns of God that hates wicked men, as much as he is hated of wicked men? The bush may burn, but it shall never be consumed; the church hath been 5600 years under burning, and persecution, and flame, but the church shall remain to the end of the world.

"Thus I have endeavoured to declare myself and my conscience, though with much brokenness and distemper: and now I am to take my leave of the world, I have only this word to say, that you bear me witness, that whatsoever may be charged on me, or may be said after my death, I am confident God will own me for an innocent person; I never to the best of my remembrance had a hand or a heart, I had rather die a thousand deaths than ever to have a hand in the blood of any of God's people; and now God hath brought me hither and not men, it is his hand; I again desire to forgive all the world, every man's person; the Lord grant that they may have mercy, and I desire, as now I desire mercy, the Lord to forgive all their sins. I know all things are under God's dealing and commission, and this condition had never come to me if God had not seen it good; and though the ax be so near, if I had more to do for God, and for his church and people, he would do with the ax, as he did with that of Abraham, God would take hold of it, and could, and blessed be his name that he takes the ordering of it to himself, therefore I have a quiet spirit, I have no discontent in the world: and now not to speak of death, alas that is nothing; but of eternity that my soul is now launching into: I am now to enter into eternity, where to stand with a naked soul before God, whose eyes are ten thousand times brighter than the sun, that cannot endure to behold iniquity: I am now going to God, that will be as a consuming fire, and as armed thunder against me, if I did not see his infinite mercy, and my blessed Saviour standing between me and the Lord, presenting all that I do: if I had all the righteousness of all the angels in heaven this day to go to God the Father, woe, and ten thousand woes to me, if I had not interest in the Lord Jesus Christ; if I had the sin of all the persons that are here, and that have been ever since the creation, if I come and stand clothed this day with the righteousness of the Lord Jesus, I am confident I should have pardon from them all, as for one; there lies my strength and my hope, and my happiness. All my righteousness, and all my prayers, and all my performances, are but as filthy rags; and should God draw out the best Sabbath that ever I kept, and the best prayer that ever I made, and the best syllable of that prayer, it would be a sin; I have scarlet sins, sins of all sorts and ranks, I assure you that you would all mourn and weep me this day. Blessed be the Lord of Heaven for the benefit and support of the prayers of God's people; I am persuaded that there was never any man in my condition, that went to heaven upon the wings of so many prayers: Be ye all content, and go home and rejoice before the Lord, be certain that you keep a day of thanksgiving for this day's work; and our souls shall bless God to eternity for this day's work; there is not one drop of blood could be spared, if it could, it should have been kept; God knows how to answer your prayers and tears, though we must

not be heard, he hath summoned us to come to the arm of his mercy, why do I stay from God longer? I bless God I am coming.

"Now I shall only desire as Samson when he made his last request, only this once help me; my call to you all is, that you would pray and mourn for me, this once help me; after a little while your prayers will do me no good, nor your tears will do me no good; therefore now for the Lord's sake help me off the scaffold, lift up a prayer to God for me, let there be some compassion, you know not what lightings may be in me; but I bless God, I hope to walk triumphantly to God presently, but do you act your parts, your strength, and your interest, whatever your prayers and tears can do, help me, I beseech you now, for I shall never more need your help.

"And now is Christ taking notice what was cast into the church's treasure, he looked upon the widow's two mites, Christ is looking this day who help me a poor creature, and supports me, and saith Christ, is there none will help him? O pray help me to commend all my conditions to God, that he would rebuke Satan, and make me die sincerely as a Christian, that I may willingly lie down on the block, as I would to lie down on a feather-bed after I am weary, that I may be willing, to come to him

pray for me, that all the graces that my soul wants they may be strengthened.

"Most glorious God, I now into thy hands commend my spirit, and all that is in me; O blessed God, I never was in want but thou didst relieve me, I was never in distress but thou helpedst me, never, never, and I am confident thou wilt not leave me, till thou see my soul in heaven. O blessed Saviour! thou wentest up and down on the earth, thou knowest what it is to suffer, what it is to be betrayed, what it is to be scorned and tempted; blessed Saviour, thou sawest me when I was running from thee; wilt thou leave me now I come to thee? Lord Jesus, I commend all into thy hands, hoping that after this day I shall never suffer more, nor never pray more."

His Prayer being ended, he put off his doublet, and asked for his friend Dr. Bastwick, and embraced him: after that he embraced his uncle, and others of his friends on the scaffold; then laying his head on the block, Dr. Bastwick came to him, and wished him to take off his rings, which accordingly he did, by raising himself upon his knees, and gave them to his uncle; which done, he laid his head on the block, and holding up his left hand, the Executioner at one blow and a small ruse severed his head from his body.

190. *Proceedings against JAMES STANLEY Earl of DERBY, \* Sir TIMOTHY FETHERSTONHAUGH, and Captain JOHN BENBOW, before a Court Martial, for High Treason: 3 CHARLES II. A. D. 1651. [Sommers' Tracts, 2 Coll. vol. 2, p. 503. Heath's Martyrs, 338. 2 Collins. Whitelocke's Memorials, 486.]*

*From the Sommers' Tracts.*

ON Wednesday being the 1st of this instant month, the earl of Derby was brought to his Trial, before the Court-Martial holden at Chester, in the year of our Lord God, 1651.

\* Lord Derby was one of those taken in the flight to the North after the battle of Worcester, Sept. 3, 1651, "from which," says Clarendon, "Cromwell returned in triumph; was received with universal joy and acclamation, as if he had destroyed the enemy of the nation, and for ever secured the liberty and happiness of the people; a price was set upon the king's head, whose escape was thought to be impossible; and order taken for the trial of the earl of Derby, and such other notorious prisoners as they had voted to destruction.

"The Earl of Derby was a man of unquestionable loyalty to the late king, and gave clear testimony of it before he received any obligations from the court, and when he thought himself disobliged by it. This king, in his first year, sent him the Garter; which, in many respects, he had expected from the last. And the sense of that honour made him so readily comply with the king's command in attending

By virtue of a Commission from his excellency the lord general Cromwell; grounded upon an act of parliament of the 12th of August last, intituled "An act prohibiting correspondence with Charles Stuart, or his party, directed to

him, when he had no confidence in the undertaking, nor any inclination to the Scots; who, he thought, had too much guilt upon them, in having depressed the crown, to be made instruments of repairing and restoring it. He was a man of great honour and clear courage; and all his defects and misfortunes, proceeded from his having lived so little time among his equals, that he knew not how to treat his inferiors; which was the source of all the ill that befel him, having thereby drawn such prejudice against him from persons of inferior quality, who yet thought themselves too good to be contemned, that they pursued him to death. The king's army was no sooner defeated at Worcester, but the Parliament renewed their old method of murdering in cold blood, and sent a Commission to erect a High Court of Justice to persons of ordinary quality, many not being gentlemen, and all notoriously his enemies, to try the earl of Derby for his treason

major gen. Mitton, &c." The said Court being assembled together, after silence proclaimed, the names of the officers were called over; where were present as followeth:

A List of the Names of the Officers at a Court-Martial holden at Chester, on the 1st of October, for Trial of the Earl of Derby, Sir Timothy Fetherstonhaugh, and Captain Benbow.

Col. Humphrey Mackleworth, President.	
Maj. Gen. Mitton.	Samuel Smith.
Col. R. Duckenfield.	John Dowdes.
Col. H. Bradshaw.	Vincent Corbet.
Col. T. Croxton.	John Delves.
Col. G. Twistleton.	John Grouth.
Lt. Col. H. Brakenhead.	Tho. Portington.
Lt. Col. Simon Finch.	Edward Alcock.
Lt. Col. Newton.	Ralph Pownall.
Captains;	Richard Grantham.
James Stefford.	Edward Stelfax.

After the Court was proclaimed, the President gave order for the prisoner to be brought to the bar; and accordingly he was guarded from the Castle to the said Court, where Judge Mackworth read the act of parliament, prohibiting correspondence with Charles Stuart, or his party. And when his lordship came to the latter clause of the said act, viz. "That whosoever shall offend against this act and declaration, shall or may be proceeded against by a Council of War, who are hereby authorised to hear and determine all and every the said offences; and such as shall by the said Council be condemned to suffer death shall also forfeit all his and then lands, goods, and other estate, as in case of High Treason." Upon which words, the earl of Derby said, "I am no Traitor, neither——" "Sir," replied the President, "your words are contemptible: You must be silent during the reading of the Act, and your Charge." After his lordship had read the said Charge of High Treason, &c. the earl pleaded, That he had quarter given him for his life by one captain Fge, which (said he) he conceived a good bar to avoid trial for life by a Council of War, unless he had committed some new fact since quarter given, that

and rebellion; which they easily found him guilty of; and put him to death in a town of his own, against which he had expressed a severe displeasure for their obstinate rebellion against the king, with all the circumstances of rudeness and barbarity they could invent. The same night, one of those who was amongst his judges, sent a trumpet to the Isle of Man with a letter directed to the countess of Derby, by which he required her "to deliver up the castle and island to the Parliament;" nor did their malice abate, till they had reduced that lady, a woman of very high and princely extraction, being the daughter of the duke de Tunoille in France, and of the most exemplary virtue and piety of her time, and that whole most noble family, to the lowest penury and want, by disposing, giving, and selling, all the fortune

and estate that should support it." Clarendon, might bring him within the cognizance of a Court-Martial. Hereupon the Commissioners took the matter into consideration, and after a long and serious debate, they agreed to over-rule him in his Plea, and finding him Guilty of Treason, passed Sentence upon him in these words:

The SENTENCE against James, Earl of Derby.

1. Resolved, by the Court, upon the question, "That James, earl of Derby, is guilty of the breach of the said Act of the 12th of Aug. last past, entitled, 'An Act prohibiting correspondence with Charles Stuart, or his Party,' and so of High-Treason against the Commonwealth of England, and therefore is worthy of death."

2. Resolved, &c. "That the said James, earl of Derby, is a Traitor to the Commonwealth of England, and an abettor, encourager, and assister of the declared traitors and enemies thereof, and shall be put to death, by severing his head from his body, at the market-place, in the town of Boulton in Lancashire, upon Wednesday, the 15th of this instant October, about the hour of one o'clock of the same day."

No sooner was Sentence denounced, but immediately he was remanded back to the place from whence he came; and in hope of mercy, hath voluntarily writ a letter to his lady for the surrender of the Isle of Man, and to submit to the present government; but it is believed, that his lines are not effectual, though life be sweet, and his lordship exceeding desirous thereof. Yet the fatal blow is expected to be given at Boulton.

Wherein the just judgment of God upon this man is very remarkable, that in the same country where he first raised arms, drew the first blood, and had done so much mischief, yea, and in the very same town, where by his means so much blood had been spilt, when he caused Rupert's tragic march that way, it should be so brought about by his righteous providence, that he should now come to have his own blood shed there upon a scaffold before all the world, by the hand of public justice: but that he would had torn the bowels of his country by a pernicious war, should be censured by a court of war, to be made an example of divine vengeance in the midst of his country.

And now as to his plea of Quarter, it appears very clear, that the Commissioners had good reason to over-rule him, as they did, in that plea; because quarter for life belongs only to such as are *Hostes*, i. e. Enemies, not to such as are *Parasitellæ*, Traitors to their Country, the earl is a native of England, and therefore being taken fighting against England, cannot be accounted a competent enemy, nor in reason expect an exemption by quarter, which in this present cause is to be esteemed only a mere suspending of a present military execution, that the offender might be brought to punishment by due course of law: So that if the earl had well consulted the Act of the 12th of

August last, whereupon he was tried, which authoriseth a Council of War to try delinquents against it, and considered himself an offender against that act, as guilty of High Treason against the land of his nativity, and this state and government, then he and his friends must needs have understood, That crimes of so high a nature, cannot be exempted by any particular officer, (who is only employed to attach and being such malefactors to trial, before the magistrate that set him on work) but are to be taken cognizance of by any persons, power or judiciary, appointed by the supreme authority against whom such delict is committed; and such was the Court Martial now in this case, they being persons empowered and designed by the parliament, to hear and determine cases of Treason, according to the tenor of the fore-mentioned Act.

But the earl's next plea was the ignorance of the Acts of Treason set forth by the Parliament. This was more slight than the former; for, every man being bound to take notice of the laws of this Commonwealth, under which he lives, or under whose power he comes, no man's ignorance can excuse, but rather aggravate his offence; besides, the very light of nature and common reason must needs have instructed him so far, as to know that it is the highest of all crimes, and treasons, for a man to lay designs, bear arms, and join with the declared enemy of his native country.

The honourable Court having proceeded to Sentence against the earl of Derby; in order to the further executing of justice, began with sir Timothy Fetherstonhaugh, and captain Benbow, and being brought to the bar, the President likewise caused the act of parliament to be read; as also their Charge, consisting of High Treason: and after a short speech by them made, touching the grounds and reasons of their Engagement, the Court proceeded to Sentence, and accordingly resolved as followeth.

The SENTENCE of the Court against sir Timothy Fetherstonhaugh.

1. Resolved upon the question, "That sir Timothy Fetherstonhaugh, is likewise guilty of the breach of the said Act of Parliament, of the 12th of August last past, and so of High Treason against the Commonwealth of England, and is therefore worthy of death.

2. Resolved, &c. "That the said sir Timothy Fetherstonhaugh, as a Traitor to the Commonwealth of England, and an abettor, encourager, and assister, of the declared traitor and enemy thereof, shall be put to death by severing his head from his body, at some remarkable and convenient place in the city of Chester, upon Wednesday the 22nd of this instant October."

The SENTENCE of the Court against Captain John Benbow.

1. Resolved by the Court upon the question, "That captain John Benbow, is also guilty of the breach of the said Act of the 12th of Aug.

last, and so of High Treason against the Commonwealth of England, and is therefore worthy of death.

2. Resolved, &c. "That the said captain John Benbow, as a traitor to the Commonwealth of England, shall be shot to death at some convenient place in the town of Shrewsbury, upon Wednesday, the 15th of this instant October, about one of the clock the same day."

The earl of Derby's Confession, that they expected a general rising of the Presbyterians in Lancashire, they being provided both with arms and ammunition, and that they had laid a plot for the surprising of Liverpool.

He confesseth also, that when himself landed lately here in England, both Ashurst and Massey told him, they had a letter signed by the Scots king, and the ministers in his army, directed to the ministers of Manchester, which (he saith) their king himself also told him, to bestir themselves in the Scots behalf.

There hath been a Summons sent into the Isle of Man, by captain Young, for the surrender thereof to the Parliament of England; Whereupon the countess of Derby returned this Answer: "That she was appointed to keep the Isle of Man by her lord's command; which in duty she was bound to obey, and that therefore without his order and appointment she would not deliver it up to any."

Her ladyship is strongly fortifying Peson Castle, where the leaden crown is kept. It is situated upon an exceeding great rock, and thought to be impregnable.

The Parliament have given directions and instructions to the High Court of Justice, for the trial of divers gentlemen who stand accused for High Treason; a list of their names followeth:

Col. J. Vaughan.	Mr. Case.
Lt. Col. Jackson.	Mr. Jackson.
Capt. H. Massey [brother to Col. Massey].	Mr. Jenkins.
Ministers.	Mr. Watson.
Dr. Drake.	Mr. Robinson. And Mr. Herrick.

The true SPEECH delivered on the Scaffold by James, Earl of Derby, in the Market-place at Boulton in Lancashire, on Wednesday last, being the 15th of this instant October, 1651. With the manner of his deportment and carriage on the Scaffold: his Speech concerning the King of Scots. And his Prayer immediately before his head was severed from his body. As also his Declaration and Desires to the People. Likewise, the manner how the King of Scots took shipping at Gravesend, on the 4th of this instant October, with Captain Hind, disguised in seamen's apparel, and safely arrived at the Hague, in Holland.

On Wednesday last, being the 15th of this instant October, the earl of Derby was brought to the Place of Execution (the Scaffold being erected and set up in the place where the Cross

formerly stood) attended by divers gentlemen and others: And where were present many hundreds of people, who came from several parts adjacent to behold this object of compassion. As soon as his lordship came upon the Scaffold he took up the block, and kissed it, saying: "I hope there is no more but this block between me and heaven; and I hope I shall never tire in my way, nor go out of it." Then turning to the people and putting off his hat, he spake as followeth:

"Christian gentlemen and people; Your business hither to day, is to see a sad spectacle, a peer of the land to be in a moment unmanned, and cut off by an untimely end: And though truly, if my general course of life were but enquired into, I may modestly say, there is such a moral honesty upon it, as some may be so peremptory as to expostulate why this great judgment has fallen upon me: But know that I am able to give them and myself an answer, and out of this breast (laying his hand upon his heart) to give a better account of my judgment and execution than my judges themselves or you are able to give; It is God's wrath upon me for sin long unrepented, of many judgments withstood and mercies slighted; therefore God hath whipped me by his severe rod of correction, that he might not lose me: I pray join with me in prayer, that it may not be a fruitless rod, that when by this rod I have laid down my life, by this staff I may be comforted and received into glory.

"As for my accusers, I am sorry for them, they have committed Judas's crimes; but I wish and pray for them Peter's tears, that by Peter's repentance they may escape Judas's punishment, and I wish other people so happy, they may be taken up betimes, before they have drunk more blood of Christian men possibly less deserving than myself.

"It is true, there have been several addresses made for mercy, and I will put the obstruction of it upon nothing more than upon my own sin, and seeing God sees it not fit (I having not glorified him in my life) I might do it in my death, which I am content to do: I profess in the face of God no particular malice to any one of the State or parliament, to do them a bodily injury I had none.

For the cause in which I had a great while waded, I must needs say, my engagement or continuance in it hath laid no scruple upon my conscience, it was on principles of law, the knowledge whereof I embrace, and on principles of religion, my judgment satisfied, and conscience rectified, that I have pursued those ways for which I bless God, I find no blackness upon my conscience, nor have I put it into the bead-roll of my sins.

"I will not presume to decide controversies; I desire God to honour himself in prospering that side that hath right with it, and that you may enjoy peace and plenty, when I shall enjoy peace and plenty, beyond all you possess here: in my conversation in the world, I do not know where I have an enemy with cause,

or that there is such a person to whom I have a regret; but if there be any whom I cannot recollect, under the notion of Christian men I pardon them as freely as if I had named them by name, I freely forgive them, being in free peace with all the world, as I desire God for Christ sake to be at peace with me. For the business of death, it is a sad sentence in itself, if men consult with flesh and blood: But truly without boasting, I say it, or if I do boast, I boast in the Lord, I have not to this minute, had one consultation with the flesh about the blow of the axe, or one thought of the axe, more than as to my pass-port to glory.

"I take it for an honour, and I owe thankfulness to those under whose power I am, that they have sent me hither to a place however of punishment, yet of some honour to die a death, exceeding worthy of my blood, answerable to my birth and qualification, and this courtesy of theirs, hath much helped towards the pacification of my mind.

"I shall desire God that those gentlemen in that sad headroll to be tried by the High Court of Justice, that they may find that really there is that is nominal in the act; An High Court of Justice, a Court of High Justice, high in its righteousness, though not in its severity. "Father forgive them, and forgive me as I forgive them."

"I desire you that you would pray for me, and not give over praying till the hour of death, nor till the minute of death, for the hour is come already; that as I have a very great load of sins, so I may have the wings of your prayers, to help those angels that are to convoy my soul to heaven, hoping this day to see Christ in the presence of the Father, and myself there to rejoice with all other saints and angels for evermore.

"One thing more I desire to be clear in. There lieth a common imputation upon the king's party, that they are Papists, and under that name we are made odious to those of the contrary opinion. I am not a Papist, but renounce the pope with all his dependencies; when the distractions in religion first sprang up, I might have been thought apt to turn from this church to the Roman, but was utterly unsatisfied in their doctrine, in point of faith, and very much, as to their discipline. The religion which I profess is that which passeth under the name of Protestant, though that be rather a name of distinction, than properly essential to religion. But the religion which was found out in the Reformation purged from all the errors of Rome, in the reign of Edw. 6. practised in the reigns of queen Elizabeth, king James, and king Charles, that blessed prince deceased, that religion before it was defaced, I am of, which I take to be Christ's Catholic, though not the Roman Catholic religion: in the profession and practice whereof, I will live and die, that for my religion."

Then he turned himself unto the Executioner, "I have no reason to quarrel with thee, thou art not the hand that throws the stone



‘———there is three pound for thee. Now tell me what I lack.’

*Executioner.* ‘Your hair to be turned up, my lord.’

*Derby.* ‘Shew me how to fit myself upon the block.’

After which his doublet being off, and hair turned up, he turned again to the people, and prayed a good while. Before he laid down upon the block, he spake again to the people, viz: “There is not one face that looks upon me, though many faces, and perhaps different from me in opinion and practice, but (methinks) hath something of pity in it, and may that mercy which is in your hearts, fall into your own bosoms when you have need of it; and may you never find such blocks of sin to stand in the way of your mercy, as I have met with. I beseech you join with me in prayer.” Then he prayed (leaning on the Scaffold) with an audible voice for about a quarter of an hour; having done, he had some private conference with Dr. Green, then taking his leave of his friends and acquaintance, saluting them all with a courteous valediction, he prepared himself for the block, kneeling down said, Let me try the block, which he did, after casting his eyes up, and fixing them very intently upon Heaven; he said, “When I say, Lord Jesus receive me, Executioner do thine office; then kissing the axe he laid down, and with as much undaunted, yet Christian courage as possibly could be in man, did he expose his throat to the fatal axe, his life to the Executioner, and committed his soul into the hands of God, as in o the hands of a faithful and merciful Creator, through the meritorious passion of a gracious Redeemer, saying the forementioned words, his head was smitten off at one blow.

#### The Earl of Derby his FUNERAL SERMON:

Preached by Doctor Green, on Tuesday, in the afternoon before his lordship was executed.

Beloved, when we come to die, we shall be stript naked of three things. 1. We shall be stript: naked of all our worldly honour, riches, and greatness. 2. We shall be stript naked of our bodies. And 3. Which is above all, we shall be stript naked of our sins. And that is the happiness of a child of God, he shall put off, not only his mortal body, but the body of sin.

4. In the fourth place observe, as no man knoweth the time when he falls asleep, a man falls asleep before he is aware: So no man can tell the certain time when he must die. There is nothing so certain as that we must die, nothing so uncertain as the time when we shall die; Death comes suddenly even as sleep comes upon a man before he is aware.

5. When a man goeth to sleep, he goeth to sleep but for a certain time, in the morning he awakes out of sleep. So it is with the sleep of death; and therefore death is called a sleep, because we must all awake in the morning of the resurrection. We are in the grave, as in

our beds, and when the trumpet of God, and the voice of the archangel shall sound; we shall all rise out of our grave, as out of our beds. Death is but a sleep for a certain time.

6. Sleep is a great refreshing to those that are weary and sick, and when the sick man awakes, he is more lively and cheerful than he was when he fell asleep; and therefore sleep is called, “*Medicus laborum redintegratio virium recreator corporum.*” The great physician of the sick body, the redintegration of man’s spirits, the reviver of the weary body. And so it is with death, when God’s people awake out of the sleep of death, they shall be made more active for God than ever they were before; when you lie down in the grave, you lie down with mortal bodies; “It is sown a mortal body, but it shall rise up an immortal body, it is sown in dishonour, but it shall rise up in honour; it is sown a natural body, but it shall rise up a spiritual body.”

7. When we rise out of our beds, we then put on our cloaths, so in the morning of the resurrection, we shall put on a glorious body, like to the glorious body of Jesus Christ, we shall put on *Stetum immortalitatis*, the garment of immortality.

8. As no man when he layeth him down to sleep, knoweth the direct time when he shall awake. So no man can tell when the resurrection shall be. They do but cozen you, who say, that the general resurrection shall be such or such a year; for as no man can know the minute when he shall awake out of his natural sleep, no more can any man know when we shall arise from the sleep of death.

9. It is a very easy thing to awake a man out of sleep, it is but jogging of him, and you will quickly awake him.

10. As when a man ariseth in the morning, though he hath slept many hours, may suppose he could sleep 20 years together, yet notwithstanding, when he awakes, these 20 years will seem to be but as one hour unto him. So it will be at the Day of Judgment, all those that are in their graves, when they awake, it will be *tantum somnus unius horæ*, but as the sleep of an hour unto them.

Lastly, and most especially, as sleep seizeth only upon the body, and the outward senses, but doth not seize upon the soul, the soul of man is many times most busy, when the man is asleep: And God hath heretofore revealed most glorious things to his children in dreams, when they have been asleep; God appeared unto Abraham and many others in dreams, the body sleeps, but the soul awakes. So it is with the sleep of death, the body that dies, but the soul doth not die. There are some men that are not afraid to teach you, that the soul sleeps as well as the body, and that when the body dies and falls asleep, the soul likewise continues in a dull lethargy *veternoso somno correptus*, neither capable of joy nor sorrow, until the resurrection. Beloved, this is a very uncomfortable, and a very false doctrine. They endeavour to prove it from my text, they say

that Stephen when he died fell asleep; It is true in regard of his body, he fell asleep, but his soul did not fall asleep, that which was stoned fell asleep, which was his body only; for when he was stoning, he saw Jesus Christ, standing ready to receive his soul into heaven; 'Lord Jesus,' saith he, 'receive my spirit.' Stephen's soul could not be stoned, though his body was stoned. So when Jesus Christ was crucified, his soul was not crucified. I mean, when his body was killed his soul was not killed, indeed he did endure torments in his soul, which made him cry out "My God, my God, why hast thou forsaken me?" But yet his soul did not die. So when Stephen died, his soul went to Christ. It is true when a child of God dies, the soul goes to sleep; How is that? The soul goes to sleep in a Scripture-sense, that is, it goes to rest in Abraham's bosom (O blessed sleep) it goes to rest in the embraces of God, it goes into the arms of its Redeemer, it goes to the heavenly Paradise, it goes to be always present with the Lord. But take heed of that wicked opinion, to say that the soul sleeps in an Anabaptistical sense, that is, that it lies in a strange kind of lethargy, neither dead, nor alive; neither capable of joy nor sorrow, until the resurrection. Though Stephen's body fell asleep, yet his soul did not fall asleep, but immediately went unto Jesus Christ in heaven. Thus I have given the explication of the words.

Now give me leave to make some application of all unto ourselves.

If the death of God's children be nothing else but a falling asleep, then let this comfort us against the deaths of our godly friends, though they die unnatural and violent deaths, though they be stoned to death, though they be burnt to ashes, though they be sawn asunder, &c. Here is a message of rich consolation, which as a minister of Christ I hold out unto you this day, viz. That the death of a child of God, let it be after what manner soever it will, it is nothing else but a falling asleep; he goes to his grave as to his bed; and therefore our burying places are called 'xō-minetēria, domitoria,' our sleeping-houses. A child of God when he lies he lies down in peace, and enters into his rest.

Dr. Green, being upon the scaffold, spake as followeth to the earl of Derby:

You have this morning in the presence of a few, given some account of your religion, and under general notions or words, have given an account of your faith, charity, and repentance.

To those on the scaffold if you please to hear the same questions asked here, you shall find that it may be a general testimony to you all, that he died in the favour of God.

Now Sir, I begin to deal with you: you do acknowledge that this stroke you are by and by to suffer, is a just punishment laid upon you by God, for your former sins.

*Derby.* I dare not only not deny it, but dare not but confess it, I have no opportunity of glorifying God more, than by taking shame to

myself, and I have a reason of the justice of God in my own bosom, which I have put to your bosom.

*Doctor.* You acknowledge you deserve more than this stroke of the ax, and that a far greater misery is due to you, even the pains and torments of hell that the damned there endure?

*Derby.* I know it is due in righteous judgment, but I know again, I have a satisfaction made by my elder brother Christ Jesus, and then I say it is not due, it is due from me, but quitted by his righteousness.

*Doctor.* Do you believe to be saved by that mediator and none others?

*Derby.* By that and that only, renouncing all secondary causes whatsoever.

*Doctor.* Are you truly and unfeignedly sorry before God, as you appear to us, for all those sins that have brought you hither?

*Derby.* I am sorry, and can never be sorrowful enough, and am sorry I can be no more sorry.

*From Heath's Royal Martyrs, p. 338.*

A true Copy of the *Speech* of the Right Hon. JAMES EARL OF DERBY, upon the Scaffold at Bolton in Lincolnshire, together with his Deposition and Prayer before his death, on Wednesday Oct. 15th 1651.

The earl of Derby, according to the order of the court-martial held at Chester, by which he was sentenced to die at Bolton in Lincolnshire, was brought to that town with a guard of horse and foot of col. Jones's, commanded by one Southley, who received his order from col. Robert Duckenfield, betwixt 12 and 1 of the clock on Wednesday the 15th of October, the people weeping, praying, and bewailing him all the way from the prison at Chester, to the place of his death.

He was brought to a house in the town near the Cross, where the scaffold was raised: and as he passed by, said, *Venit Dominus.* 'I am prepared to fulfil thy will, O my God: this scaffold must be my cross: Blessed Saviour, I take it up willingly, and follow thee.' From thence going into a chamber with some friends and servants, he was advertised by the commander in chief, that he had till 3 o'clock allowed him to prepare for death, for indeed the scaffold was not ready; the people of the town and country generally refusing to carry so much as a plank, or strike a nail, or to lend any assistance to that work, their cry being generally in the streets: 'O sad day, O woful day! shall the good earl of Derby die here? Many sad losses have we had in this war, but none like unto this; for now the ancient honour of our country must suffer here.' And to add to his trouble, most of the timber that built the scaffold, was of the ruins of Latham-house; but nothing could alter his lordship's resolution and courage: for with a steadfast composed countenance, and a cheerful, he called the company which were present to

prayers with him, wherein he shewed admirable fervency, and a kind of humble importunity with Almighty God, that he would pardon his sins, be merciful to his soul; and be gracious to this land, in restoring the king, laws and liberty; and that he would be a husband to his wife, a father to his children, and a friend to all those that suffered by his loss, or that had been friends to him.

"Arising from prayer, he sat down with a very pleasant countenance; and assured the standers by, that God had heard his prayers, which the blessed spirit of God witnessed unto him, in the present comforts he now felt in his soul. Then he entered into a discourse of his life, and beseeched God to forgive him the days and time he had mis-spent; and said, it was his comfort, that although he had not walked so circumspectly as he ought to have done, yet he ever had a sense of his sins, and a tender respect to all the services, servants and ordinances of his God; and that he knew God had mercy for him, that he had strengthened and comforted him against all the terrors of death.

"After these, and some other words to this purpose, he desired his friends and the people by to pray with him again; which when he had ended, rising from his knees, he appeared fully satisfied of a gracious return to his prayers, and never after shewed any sadness in his countenance.

"His next business was with his son the lord Strange, whom he publicly charged to be dutiful to his sad mother, affectionate to his distressed brothers and sisters, and studious of the peace of his country; But especially, said he, son, I charge you upon my blessing, and upon the blessings you expect from God, to be ever dutiful to your distressed mother, ever obedient to her commands, and ever tender how you in any thing grieve or offend her; She is a person well known to the most eminent personages of England, France, Germany and Holland, noted for piety, prudence, and all honourable virtues; and certainly the more you are obedient to her, the more you will increase in favour with God and man.

"Then desired to be private in the room himself: where he was observed to be about half an hour upon his knees with frequent interjections of groans and sighs before his God. Then when he called the company in again, his eyes witnessed to us, that he had abundantly mixed tears with his prayers; he told us that he was very willing to leave the world, being assured by the testimony of God's spirit, that he should be carried from trouble, to rest and peace, from sorrow to joy, from life to death, and that death had no other bitterness in it to him, but that it took him from his dear wife and children; whom he humbly commended to the protection and providence of a better husband, and a better father; and that he did not doubt, but that the general, and they who sat in the seat of authority, would make provision for them, hoping that his death might satisfy all those who sought his life, whom he

freely forgave, and desired God to do the like.

Then calling for his son, he took his leave of him, and blessed him; which indeed would have grieved any one's heart, though never so hardened, to see the parting of him now with his son, and with his two daughters, the lady Catharine, and lady Apely Stanley, upon the road betwixt Chester and Bolton the day before.

"This ended, he called the officer, and told him he was ready. In his way to the scaffold, the people prayed, and wept, and cried aloud; to whom his lordship with a cheerful countenance, and courteous humbleness, said, 'Good people, I thank you, and I beseech you still pray for me, and our blessed God return your prayers back into your own bosoms: The God of mercies bless you, the Son of God establish you in righteousness, and the Holy Ghost fill you with all comforts.' Coming near the scaffold, he looked up and said, 'God I thank thee, I am not afraid to go up here, though I am to die there; there are but these few steps to my eternity.' Then kissing the ladder, he went up and saluted the people: he walked a turn or two upon the scaffold, then went to the east-end of the scaffold, and pulled off his hat again and saluted the people with a cheerful countenance, said:

"I am come by the will of my heavenly Father to die in this place; and I thank God I do with all willingness and readiness submit to his most blessed will.

"It is a place I desired to see when I was last in the country, both for the mutual obligations that have been betwixt this town and my family, as also for your particular respects to me, whom I have understood to be ready to clear me from that foul imputation, That I was a man of blood; and that particularly, I killed one Bootle here in cold blood: I doubt not but there are here many men present, both that day this town was taken, and divers other times during this war, that can justify I preserved many lives, but I know there is not any one present, that can lay the blood of any man whatsoever to my charge, unless what might casually happen in the fury and heat of a battle; and why I die in this town, I know not; unless it be to persuade the Nation that I fall as a sacrifice for that blood, which some said I shed here, from which I am acquitted before you, and from which I had also cleared myself before my grand judges at Westminster, had they pleased to hear me, before they had destroyed me; that report being hastily brought up among them, by some that I hope God hath forgiven, and too readily drunk in by others, whom I pray God to forgive. As for my crime (as some are pleased to term it), which was objected against me by the council of war (for Bootle's death was never mentioned against me there, that being only secretly used to raise a prejudice against me in the judgments of such as did not know me), my crime (I say) though I hope it deserves a far better name, was, That I came into my own country with my own lawful king; I came in obedience to his ma-

jesty's call, whom both by the laws of God, and the laws of this land, I conceived myself obliged to obey; and according to the protestation I took in parliament in the time of that blessed prince his father; so, if it be my crime, I here confess it again before God, angels, and men, That I love monarely as the best government, and I die with love and honour: and for the love and honour I bear to my master that now is, Charles the Second of that name, whom I myself in this country proclaimed King: the Lord bless and preserve him, and incline the hearts of those that have power in this nation, to accept him to his father's throne with honour and peace, for certainly, as I believe, this nation will never be well contented, never thoroughly happy without a king; so I believe also, that king Charles the Second, our now lawful king, were he a stranger to this crown, were the most fit, and most accomplished prince that this day lives, to take the government of this people; his admirable piety, virtue, justice, great valour and discretion, far above so few years, doth now make him in all places he comes highly beloved, and will hereafter make him honourable among all nations: and I wish the people of this nation so much happiness (when my eyes are closed) that he may peaceably be received to the enjoyment of his just right, and then they shall never want their just rights, which till then, they will always want.

"As for my being in arms in the beginning of this war, I profess here in the presence of my God, before whom in a few minutes I must make an account for this profession, I only fought for peace, and settling the late king my master in his just rights, and maintenance of the laws of this land, and that I had no other design, intent or purpose for my then taking up arms: and for this last engagement, I profess here again in the presence of the same God, that I did it for the restoring of my lawful sovereign into that throne, out of which his father was most unchristianly and barbarously taken, by the most unjust Sentence of a pretended Court of Justice, and himself against law and all justice kept out and dispossessed of; and this was all my reason. For as for estate and quality, I wanted not a sufficient competency, neither was I ever ambitious to enlarge either: for by the favour of my king's predecessors, my family was raised to a condition well known in this country: and now it is as well known, that by his enemies I am adjudged to die, and that by new and monstrous laws, as making me an enemy to my country; as, fighting for my country, as a traitor to the laws, for endeavouring to preserve laws: But, Oh! God give me grace to consider him who suffered such contradictions of sinners, and O my God, assert the king to his father's throne, assert the laws to their former honour, and restore thy own religion in its purity, that all these shadows and false pretences of religion may vanish away, and our children's posterities may serve thee in spirit and in truth.

"Good friends, I die for the King, the Laws of the Land, and the Protestant Religion maintained in the Church of England, all which as I was ready to maintain with my life, so I cheerfully suffer for them; in this welcome death."

[At which words 'King' and 'Laws,' a trooper said aloud, 'We will neither have King, Lord, nor Laws;' and upon a sudden the soldiers being either surprised with fear at a strange noise that was heard, or else falling into mutiny, presently fell into a tumult, rising up and down the streets, cutting and slashing the people, some being killed and many wounded: his lordship looking upon this sad spectacle, said thus, 'Gentlemen, it troubles me more than my own death, that others are hurt, and (I fear) die for me; I beseech you stay your hands, I fly not, you pursue not me, and here are none to pursue you.' But being interrupted in his speech, and not permitted to go on further, (for which the officers were very much troubled) he turned aside to his servant, and gave him the Speech into his hand, saying, 'I will speak to my God, who I know will hear me, and when I am dead, let the world know what I would have said.' Here his lordship was interrupted; but it was his willows, in his own copy under his own hand.]

"I am sentenced to death by a Council of War, after quarter for life, and assurance for honourable and safe usage by captain Edge, I had reason to have expected the Council would have justified my plea, which hath been ancient, honourable, sacred and unviolable, until this time that I am made the first suffering precedent; for I dare affirm it, that never gentleman before in any Christian nation was adjudged to death by a council of war after quarter given; I am the first, and I pray God I may be the last precedent in this case: I must die, and I thank God I am ready for it; death would be now my choice, had I the whole world in competition with it. I leave nothing behind me which I much care for, but my king, my wife, my children, my friends, whom (I trust) the never-failing mercies of my God will provide for: I beseech God shew mercy to those who neither had mercy nor justice for me: My blessed Saviour taught me by his example and command, both to pray for my enemies, and to forgive my enemies: I forgive them freely, even those that contrived my ruin, and pursued me to death; I thank God I never personally offended them to my knowledge in my life, and let me not offend against them at my death: I forgive them freely, and pray God for Christ's sake to forgive them also.

"Of my faith and religion, I shall not (I hope) need to say much, herein I hope my enemies (if now I have any) will speak for me. I profess my faith to be in God only, from whom I look for my salvation through the precious merits and sufferings of my blessed Saviour, Jesus Christ, which merits and sufferings are applied to my soul, by the blessed

spirit of comfort, the spirit of God, by whom I am assured in my own soul, that my God is reconciled unto me in Jesus Christ my blessed Redeemer.

"I die a dutiful son to the Church of England, as it was established in that blessed prince my late master's reign, which all men of learning and temperance will acknowledge to be the most pure, and agreeable to the word of God, and primitive government of any church within 12 or 1300 years since Christ, and which (to my great comfort) I left established in the Isle of Man; God preserve it there and restore it to this nation.

"And O blessed God, I magnify thy name, that thou gavest me the happiness and mercy to be born in a Christian nation, and in a nation where thy truth was professed in purity: With honour to thy name, and comfort to thy people, I ascribe the comforts of thy Holy Spirit which I feel in my bosom, to the ministry of thy word and sacraments conveyed unto me in thy church, and made effectual by the operation of the same blessed spirit. In this faith, good people, I have lived and in this I die: pray for me, I beseech you, and the God of mercies hear your prayers and my prayers, for mine and your salvation.

"Presently after the tumult was over, his lordship called for the Headsman, and asked to see the axe, and taking it in his hand, said 'Friend, I will not hurt it, and I am sure it cannot hurt me;' and then kissing it, said, 'Remember this is as a wedding ring, which is as a sign I am to leave all the world, and eternally to be married to my Saviour.' Then putting his hand in his pocket, said to the Headsman, 'Here friend, take these two pieces, all that I have, thou must be my priest, I pray thee do thy work well and effectually.' Then handling the rough furied coat the Headsman had on, 'This' (says he) 'will be troublesome to thee.' 'I pray thee put it off, and do it as willingly as I put off this garment of my flesh, that is now so heavy for my soul;' then some of the standers by bid the Headsman kneel and ask his lordship pardon; but he did not, but was surly and crabbed: but his lordship said, 'Friend, I give thee the pardon thou wilt not ask, and God forgive thee also.' Then turning up his eyes to heaven, said aloud, 'How long Lord? how long?' then gently passing over the scaffold, and seeing one of his chaplains on horseback among the people, 'Good Sir' (said he) 'pray for me, and the Lord return your prayers into your own bosom, and I pray remember me kindly to your brother, and God remember him for his love to me and mine.

"Then turning towards his coffin, 'Thou art' (said he) 'my bridal chamber, in thee I shall rest without a guard, and sleep without soldiers.'

"Then looking towards the block, he asked if all were ready. 'That' (said he) 'methinks is very low, and yet there is but one step betwixt that and heaven;' then turning his eyes

to the people, he saluted them, and desired again their prayers; then said, 'I see your tears, and hear your sighs and groans and prayers: the God of heaven hear and grant your supplications for me, and mine for you, and the mediation of Christ Jesus for us all.'

"Here his lordship caused the block to be turned, that he might look upon the church, saying, 'Whilst I am here, I will look towards thy holy sanctuary, and I know that within a few minutes, I shall behold thee my God and king in thy sanctuary above, under the shadow of thy wings shall be my rest till this calamity be overpast;' then he pulled off his blue garter, and sent it to his son, and pulling off his doublet, with a very religious cheerfulness, he said, 'I come, Lord Jesus, and O come thou quickly,' that I may be with thee for ever: upon this he said, 'Pray tell me how must I lie, I have been called a bloody man, yet truly I never yet had that severe curiosity to see any put to death in peace;' then laying himself down on the block, after a few minutes he rose again, and caused the block to be a little removed; then said to the headsman, 'Friend, remember what I said to thee: and be no more afraid to strike than I to die; and when I put up my hand, do thy work;' so looking round about his friends and the people, he said, 'The Lord bless you all, and once more pray for me and with me;' at which words he kneeled down, and prayed privately within himself, with great sighs, about half a quarter of an hour, concluding with the Lord's Prayer, then rising up again, he said, smilingly, 'My soul is now at rest, and so shall my body be immediately. The Lord bless my king, and restore him to his right in this kingdom, and the Lord bless this kingdom, and restore them to their rights in their king, that he and they may join hand in hand to settle truth and peace; and the Lord bless this county, and this town, and this people. The Lord comfort my sad wife and children, and reward all my friends with peace and happiness, both here and hereafter; and the Lord forgive them who were the cause and authors of this my sad end and unjust death, for so it is as to mankind; though before God I deserve much worse, but I hope my sins are all bathed in the blood of Jesus Christ.' So laying his neck upon the block, and his arms stretched out, he said these words: 'Blessed be God's glorious name for ever and ever. Let the whole earth be filled with his glory. Amen, Amen.'

"At which words, he gave the headsman the sign; but he either not observing it, or not being ready, stayed too long, so that his lordship rose up again, saying, 'Why do you keep me from my Saviour? what have I done that I die not, and that I may live with him? Once more I will lay myself down in peace, and so take my ever lasting rest.' Then saying, 'Come Lord Jesus, come quickly,' he stretched out his arms, and gave the sign, repeating the same words: 'Blessed be God's glorious name for ever and

'ever. Let the whole earth be filled with his glory. Amen, Amen.'

"Then lifting up his hand, the Executioner did his work at one blow, all the people weeping and crying, and giving all expressions of grief and lamentation.

"When the coops were carried off the scaffold, they carried them to a house in the town, where was thrown into his coffin in a piece of paper these two lines:

Upon JAMES, Earl of DERBY.

'Bounty, Wit, Courage, all (here) in one he dead.  
'A Stanley's hand, Viceroy's heart, and Cecil's head.

*From Whitlocke's Memorials, p. 436.*

October 6. 1651. Letters, That the earl of Derby was tried at a Court-Martial at Chester, at which were 20 officers, captains, and above that degree, five colonels, major-general Mitton, and colonel Mackworth the President. That the Earl confessed the Plot for a general rising of the Presbyterians in Lancashire, to join with the King, but it was disappointed by the apprehending of Mr. Barkinhead. That sir Tho. Tiddesley, major Ashurst, and major-general Massey, were principal actors in that Conspiracy. He confessed the matters of Treason charged against him, and submitted to the mercy of Parliament. And for plea, 1. He alledged 'he had quarter given him, and therefore was not to be tried by a Court-Martial 'for life,' but this was over-ruled by the Court. 2. He pleaded 'ignorance of the acts of treason 'set forth by the Parliament;' which plea was also over-ruled; and the Court sentenced him to be beheaded for his treasons at Bolton, where he had killed a man in cold blood. The Earl seemed very desirous of life, and petitioned the Lord General upon the point of his having quarter, but had no relief from him. The Court sentenced sir Tim. Fetherston to be beheaded for the same treasons; and capt. Benbow to be shot to death.

Oct. 8. Letters, That captain Young, who commanded the President figure, coming to the Isle of Man, summoned it for the Parliament; but the countess of Derby being there, returned answer, 'That she was to keep it by her Lord's command, and without his order she would not deliver it up, being in duty bound to obey her Lord's commands.'

Oct. 13. Letters, That the earl of Derby attempted to escape, and was let down by a rope from the tops of his Chamber, but some hearing a noise, made after him; and that he was re-taken upon Dee Bank. He wrote a handsome passionate Letter to his lady to comfort her, and advised her, as then matters stood, to surrender the Isle of Man upon good conditions.

Oct. 20. Letters of the particulars of the earl of Derby's death; who carried himself with stoutness and Christian-like temper.

Nov. 1. Letters, That sir Tim. Fetherston was executed at Chester, according to the sentence of the Court-Martial, and used only a few prayers out of the Common-Prayer-Book.

*From 2 Collins's Peerage, 46: Edit. 1735.*

James the seventh earl of Derby, was a person highly accomplished with learning, prudence, loyalty, and true valour; whereof he gave signal proofs on several occasions in the civil wars, especially in that memorable encounter in Wigton-Lane, where with 600 horse he maintained a fight of two hours against 3000 horse and foot, commanded by col. Talburne; and though in that action he received several shot on his breast-plate, thirteen cuts on his beaver, five or six wounds on his arms and shoulders, and had two horses killed under him, yet he made his way to king Charles at Worcester; whence, upon the loss of the day there, Sept. 3, 1651, he fled with him into Staffordshire, where, leaving the king secure, and shifting for himself, he had the misfortune to be taken in Cheshire by col. Edge, who had him tried by a court-martial, which voted him guilty of the breach of an act of the 12th of August 1651, entitled, An Act for prohibiting all correspondence with Charles Stuart or his party; and accordingly he was sentenced to death, and beheaded at Bolton in Lancashire, Oct. 15, 1651, and buried at Oulton.

His behaviour and speech on the scaffold were very remarkable, which having not yet been published, I shall here insert.

*A true Relation of the Death of this great man, given by Mr. Bagaley, who attended on him.*

Upon Monday Oct. 13, 1651, my lord procured me liberty to wait upon him, having been close prisoner ten days. He told me the night before, Mr. Slater, colonel Duckenfield's chaplain, had been with him from the governor, to persuade his lordship, that they were confident his life was in no danger; but his lordship told me, he heard him patiently, but did not believe him, for, says he, 'I was resolved not to be deceived with the vain hopes of this fading world.' After we had walked a quarter of an hour, he discoursed his own commands to me, in order to my journey to the Isle of Man; as to his consent to my lady, to deliver it, on the articles his lordship had signed. With many affectionate protestations of his honour and respect for my lady, both for her birth and goodness as a wife, and much tenderness of his children there.

Then immediately came in one lieutenant Smith, a rude fellow, and with his brist on; he told my lord he came from colonel Duckenfield the governor, to tell his lordship he must be ready for his journey to Bolton. My lord replied, 'when would you have me to go?' 'Tomorrow about six in the morning,' said Smith. Well, said my lord, 'commend me to the governor, and tell him, by that time I will be ready.' Then Smith said, 'Doth your lordship know any friend or servant that would do the thing that your lordship knows of? It would do well if you had a friend.' My lord replied,

'what do you mean? Would you have me find one to cut off my head?' Smith said, 'Yes, my lord, if you could have a friend.' My lord said, 'Nay, Sir, if those men that would have my head, will not find one to cut it off, let it stand where it is. I thank God, my life has not been so bad, that I should be instrumental to deprive myself of it, though he has been so merciful to me as to be well resolved against the worst terrors of death. And for me and my servants, our ways have been to prosecute a just war by honourable and just means, and not by these ways of blood, which to you is a trade.' Then Smith went out, and called me to him, and repeated his discourse and desires to me. I only told him, my lord had given him an answer. At my coming in again, my lord called for pen and ink, and writ his last letter to my lady, to my lady Mary, and his sons in the isle of Man. And in the mean time Mons. Paul Moreau, a servant of my lord's, went and bought all the rings he could get, and lapped them up in several papers, and writ within them, and made me superscribe them to all his children and servants. The rest of the day, being Monday, he went with my lord Strange, my lady Katharine, and my lady Amelia. At night about six I came to him again, when the ladies were to go away. And as we were walking, and my lord telling me he would receive the Sacrament next morning, and on Wednesday morning both, in came the aforesaid Smith, and said, 'my lord, the governor desires you will be ready to go in the morning by seven o'clock.' My lord replied, 'Lieutenant, pray tell the governor, I shall not have occasion to go so early; by nine o'clock will serve my turn, and by that time I will be ready, if he has not earlier occasions he may take his own hour.' That night I staid, and at supper my lord was exceeding cheerful and well-composed; he drank to Sir Timothy Featherstone (who was a gentleman that suffered at Chester a week after in the same cause) and said, 'Sir, be of good comfort, I go willingly before you, and God hath so strengthened me, that you shall hear (by his assistance) that I shall so submit, both as a Christian and a soldier, as to be both a comfort and an example to you.' Then he often remembered my lady Mary, with my lady his wife, and his sons, and drank to me and all his servants, especially Andrew Broom; and said, he hoped that they that loved him, would never forsake his wife and children, and he doubted not but God would be a father to them, and provide for them after his death.

In the morning my lord delivered to me the letters for the island, and said, 'Here, Bagaley, deliver these with my tender affections to my dear wife, and sweet children, which shall continue with my prayers for them to the last minute of my life. I have instructed you as to all things for your journey. But as to that sad part of it (as to them) I can say nothing. Silence and your own looks will best tell your

message. The great God of Heaven direct you, and prosper and comfort them in this their great affliction.' Then his lordship took leave of sir Timothy Featherstone, much in the same words as over night. When he came to the castle-gate, Mr. Crossen and three other gentlemen, who were condemned, came out of the dungeon (at my lord's request to the Marshal) and kissed his hand, and wept to take their leave. My lord said, 'God bless and keep you, I hope my blood will satisfy for all that were with me, and you will in a short time be at liberty; but if the cruelty of these men will not end there, be of good comfort, God will strengthen you, to endure to the last, as he has done me. For you shall hear I die like a Christian, a man, and a soldier, and an obedient subject, to the most just and virtuous prince this day living in the world.'

After we were out of town, the people weeping, my lord with an humble behaviour, and noble courage, about half a mile off, took leave of them, (two of my lady Katharine and Amelia, upon his knees by the coach side (alighting for that end from his horses) and there prayed for them, and saluted them, and so parted. This was the saddest hour I ever saw, so much tenderness and affection on both sides.

That night, Tuesday the 14th of October 1651, we came to Leigh; but in the way thither, his lordship, as we rode along, called me to him, and bid me, when I should come into the isle of Man, to commend him to the archdeacon there, and tell him he well remembered the several discourses, that had passed between them there, concerning death and the manner of it; and he had often said the thoughts of death could not trouble him in fight, or with a sword in hand, but he feared it would something startle him, timely to submit to a blow on the scaffold. But said his lordship, 'Tell the archdeacon from me, that I do now find in myself an absolute change, as to that opinion, for I bless God for it, who hath put this comfort and courage into my soul, that I can as willingly now lay down my head upon a block, as ever I did upon a pillow.'

My lord supped a competent meal, saying 'he would imitate his Saviour; a supper should be his last act in this world;' and indeed his Saviour's own supper before he came to his cross, which would be to-morrow. At night when he laid him down upon the right side, with his hand under his face, he said, 'Methinks I lie like a monument in a church, and to-morrow I shall really be so.'

As soon as he rose next morning, he put on a fresh shirt, and then said, 'this shall be my winding-sheet, for this was constantly my meditations in this action. See,' said he to Mr. Paul, 'that it be not taken away from me, for I will be buried in it.'

Then he called for my lord Strange to put on his Order, and said, 'Charles, once this day I will send it you again by Bagaley, pray return it to my gracious sovereign, when you shall be so happy as to see him; and say, I sent it in

'all humility and gratitude, as I received it  
'spotless, and free from any stain, according to  
'the honourable example of my ancestors.'

Then we went to prayer, and my lord commanded Mr. Greenhaugh to read the Decalogue, and at the end of every commandment made his confession, and then received absolution, and the Sacrament; after which, and prayers ended, he called for pen and ink, and wrote his last speech, also a note to Sir E. S.

When we were ready to go, he drank a cup of beer to my lady, and lady Mary, and Masters, and Mr. Archdeacon, and all his friends in the island, and bid me remember him to them, and tell the archdeacon he said the old grace he always used, &c. Then he would have walked into the church, and seen Mr. Tildesley's grave, but was not permitted, nor to ride that day upon his own horse; but they put him upon a little nag, saying they were fearful the people would rescue his lordship.

As we were going in the middle way to Bolton, the wind came easterly, which my lord perceived, and said to me, 'Bagaley, there is a great difference between you and me now, for I know where I shall rest this night in Wigan, with the prayers and tears of that poor people, and every alteration moves you of this world, for you must leave me to go to my wife and children in the Isle of Man, and are uncertain where you shall be; but do not leave me, if possibly you can, until you see me buried, which shall be as I have told you.'

*Some remarkable Passages in my lord's going to the Scaffold, and his being upon it, with his last Speech and dying Words.*

Betwixt twelve and one o'clock on Wednesday, the earl of Derby came to Bolton, guarded with two troops of horse, and a company of foot; the people weeping and praying all the way he went, even from the castle, his prison at Chester, to the scaffold at Bolton, where his soul was fixed from the prison of his body. His lordship being to go to a house in Bolton, near the cross, where the scaffold was raised, and passing by, he said, 'This must be my cross.' And so going into a chamber with some friends and servants, had time courteously allowed him by the commander in chief 'till three o'clock that day, the scaffold not being ready, by reason the people in the town refused to strike a nail in it, or to give them any assistance: many of them saying, that since these wars they have had many and great losses, but none like this, it being the greatest that ever befell them, that the earl of Derby should lose his life there, and in such a manner. His lordship, as I told you, having 'till three o'clock allowed him, I spent that time with those that were with him, in praying with them, and telling them how he had lived, and how he had prepared to die, how he feared it not, and how the Lord had strengthened him, and comforted him against the terrors of death; and after such like words, he desired them to

pray with him again, and after that giving some good instructions to his son the lord Strange, he desired to be in private, where we left him with his God, where he continued upon his knees a good while in prayer. Then he called for us again, telling how willing he was to die and part this world, and that the fear of death was never any great trouble to him, never since his imprisonment, though he had still two or three soldiers with him, night and day in the chamber. Only the care he had of his wife and children, and the fear what would become of them, was often in his thoughts. But now he was satisfied, that God would be a husband and a father to them, into whose hands he committed them; and so taking leave of his son, and blessing him, he called for an officer, and told him he was ready. At his going towards the scaffold, the people prayed and cried, and cried and prayed. His lordship with a courteous humbleness said, 'Good people, I thank you all, I beseech you to pray for me to the last. The God of heaven bless you, the Son of God bless you, and God the Holy Ghost fill you with comfort.' And so coming near the scaffold, he laid his hand on the ladder, saying, 'I am not afraid to go up here, though I am to die there; and so he kissed it and went up, and walking awhile upon the scaffold, settled himself at the east end of it, and made his address to the people thus, viz.

'I come, and am content to die in this town, where I endeavoured to come the last time when I was in Lancashire, as to a place where I persuaded myself to be welcome, in regard the people thereof have reason to be satisfied in my love and affection to them; and that now they understand sufficiently. I am no man of blood, as some have falsely slandered me, especially in the killing of a captain in this town. Whose death is declared on oath, so as the time and place now appears under the hand of a master in Chancery, besides the several attestations of a gentleman of honour in the kingdom, who was in the fight in this town, and of others of good report, both in the town and country; and I am confident, there are some in this place, who can witness my mercy and care, for sparing many men's lives that day.

'As for my crime (as some are pleased to call it) to come into this country with the king, I hope it deserves a better name; for I did it in obedience to his call, whom I hold myself obliged to obey, according to the protestation I took in parliament in his father's time. I confess I love monarchy, and I love my master Charles, the second of that name, whom I myself proclaimed in this country to be king. The Lord bless him and preserve him, I assure you he is the most goodly, virtuous, valiant, and most discreet king that I know lives this day; and I wish so much happiness to this people after my death, that he may enjoy his right, and then they cannot want their rights. I profess here in the pre-



'sence of God, I always fought for peace, and  
'I had no other reason; for I wanted neither  
'means, nor honours, nor did I seek to enlarge  
'either. By my king's predecessors, mine  
'were raised to a high condition, it is well  
'known to the country; and it is as well  
'known, that by his enemies, I am condemned  
'to suffer by new and unknown laws. The  
'Lord send us our king again, and our old laws  
'again, and the Lord send us our religion  
'again.

'As for that which is practised now, it has  
'no name, and methinks there is more talk of  
'religion than any good effects of it.

'Truly to me it seems I die for God, the  
'King, and the Laws, and this makes me not to  
'be ashamed of my life, nor afraid of my  
'death.'

At which words, 'the King and Laws,' a  
trooper cried, 'We have no King, and we will  
'have no Lords.' Then some sudden fear of  
mutiny fell among the soldiers, and his lordship  
was interrupted, which some of the officers  
were troubled at, and his friends much grieved,  
his lordship having freedom of speech promised  
him. His lordship seeing the troopers scattered  
in the streets, cutting and slashing the people  
with their swords, said, 'What is the mat-  
'ter, gentlemen, where is the guilt, I fly not,  
'and here is none to pursue you?' Then his  
lordship perceiving he might not speak freely,  
turned himself to his servant, and gave him his  
paper, and commanded him to let the world  
know what he had to say, had he not been dis-  
turbed, which is as follows, as it was in my  
lord's paper under his own hand:

'My Sentence upon which I am brought hi-  
'ther, was by a Council of War, nothing in  
'the captain's case alleged against me; which  
'Council I had reason to expect would have  
'justified my plea for Quarter, that being an  
'ancient and honourable plea amongst sol-  
'diers, and not violated (that I know of) till  
'this time, that I am made the first suffering  
'precedent in this case, I wish no other suffer  
'in the like case.

'Now I must die, and am ready to die, I  
'thank my God with a good conscience, with-  
'out any malice, or any ground whatever;  
'though others would not find mercy upon  
'me, upon just and fair grounds, so my Sa-  
'viour prayed for his enemies, and so do I for  
'mine.

'As for my faith and my religion, thus much  
'I have at this time to say.

'I profess my faith to be in Jesus Christ, who  
'died for me, from whom I look for my salva-  
'tion, that is, through his only merit and suf-  
'ferings. And I die a dutiful son of the church  
'of England, as it was established in my late  
'master's time and reign, and is yet professed in  
'the Isle of Man, which is no little comfort to  
'me.'

'I thank my God for the quiet of my con-  
'science at this time, and the assurance of  
'those joys that are prepared for those that

'fear him. Good people pray for me, I do for  
'you, the God of heaven bless you all, and  
'send you peace, that God, that is truth it-  
'self, give you grace, peace and truth. Amen.'

Presently after the uproar was ceased, his  
lordship was walking on the scaffold, called for  
the Headsman, and asked to see the axe, say-  
ing, 'Come, friend, give it me into my hand, I  
'will neither hurt it nor thee, and it cannot hurt  
'me, I am not afraid of it;' but kissed it, and so  
gave it the Headsman again. Then asked for the  
block, which was not ready, and turned his eyes  
and said, 'How long Lord, how long? Then putt-  
ing his hand in his pocket, gave him two pieces  
of gold, saying, 'I his is all I have, take it, and  
'do thy work well. And when I am upon the  
'block, and lift up my hand, then do your  
'work; but I doubt your coat is too burly,'  
(being of great black shag) 'it will hinder you  
'or trouble you.' Some standing by, bid him  
ask his lordship's forgiveness, but he was either  
too sullen, or too slow, for his lordship forgave  
him before he asked him. And so passing to  
the other end of the scaffold, where his coffin  
lay, spying one of his chaplains on horseback  
among the troopers, said, 'Sir, remember me  
'to your brothers and friends, you see I am  
'ready, and the block is not ready, but when I  
'am got into my chamber, as I shall not be  
'long out of it,' pointing to his coffin, 'I shall  
'be at rest, and not troubled with such a guard  
'and noise, as I have been;' and so turning  
himself again, he saw the block, and asked if it  
was ready, and so going to the place where he  
began his speech, said, 'Good people, I thank  
'you for your prayers, and for your tears, I  
'have heard the one, and seen the other, and  
'our God sees and hears both. Now the God  
'of heaven bless you all, Amen.' And so bow-  
ing, turned himself towards the block, and then  
looking toward the church, his lordship caused  
the block to be turned, and laid that ways, say-  
ing, 'I will look towards the sanctuary which  
'is above for ever.' Then, having his doublet  
off, he asked, 'how must I lie, will any one shew  
'me, I never yet saw any man's head cut off;  
'but let me try how it fits;' and so laying him  
down, and stretching himself upon it, he rose  
again, and caused it to be a little removed, and  
standing up, and looking towards the Heads-  
man, said, 'Remember what I told you, when  
'I lift up my hands, then do your work.'

And looking at his friends about him, bow-  
ing said, 'the Lord be with you all, pray for  
'me;' and so kneeling on his knees, made a  
short and private prayer, ending with the Lord's  
Prayer. And so bowing himself again, said,  
'the Lord bless my wife and children, the Lord  
'bless us all.' So laying his neck upon the  
block, and his arms stretched out, he said these  
words aloud:

'Blessed be God's glorious name, for ever  
'and ever, Amen.

'Let the whole earth be filled with his glory,  
'Amen.'

And then lifting up his hands, was ready to

give up the ghost, but the Executioner not well observing, was too slow. So his lordship rose again, saying, 'What have I done that I die not? Why do not you your work?' (to the Headsman.) 'Well,' says his lordship, 'I will lay myself down once again in peace, and I hope I shall enjoy everlasting peace.' So laid him down again, with his neck to the block, and his arms stretched out, saying the same words,

'Blessed be God's glorious name for ever and ever.'

'Let the whole earth be filled with his glory, Amen.'

And then lifting up his hands, the Executioner did his work, and no manner of noise was then heard but sighs and sobs\*.

The following Article is extracted from the *European Magazine*, for January, 1795, p. 44.

To the EDITOR of the EUROPEAN MAGAZINE.

SIR,

I send you a Pamphlet little known, though, from the manly spirit which breathes through the whole of it, well worthy of remembrance. "Among the sufferers for King Charles the First," says Lord Orford, in his Catalogue of Noble Authors, vol. i. p. 218, under the article of James Stanley, Earl of Derby, "None cast a greater lustre on the cause than this heroic Lord, who seems to have been actuated by a true spirit of honour and disinterestedness. Some contracted great merit from their behaviour in that quarrel; the conduct and brave death of this Lord were but the conclusion of a life of virtue, accomplishments, and humanity." This Nobleman was beheaded at Bolton, Oct. 15, 1651. The Declaration which I solicit you to insert appears to have been unknown to Lord Orford, who takes no notice of it; and indeed, that

\* "Charlotte, daughter to Claude, duke de la Tourville, the conjugal counterpart of this gallant peer, behaved with exemplary prudence, dexterity and honour; and her defence of Latham-house for a whole month against an army of 2,000 men, may be recorded among the bravest actions of those times. She formed her garrison, appointed her officers, and commanded in chief during the whole siege, till it was raised by her royal lord. Having in the course of her command received a summons to surrender from colonel Rigby, she replied, in the spirit of her husband, 'Tell that insolent rebel Rigby, that if he presumes to send another summons within this place, I will have the messenger hanged up at the gates.' This circumstance is commemorated by a picture at Knowsley, in Lancashire. See Peck, *Desid. Cur.* lib. xi. p. 44, and Pennant's *Tour to Alston Moor*. Mr. Granger mentions her as the last person in the British dominions, who yielded to the Republican party." 3 Orford's *Noble Authors*, 41. Park's edit. A. D. 1806.

it should be suppressed is not to be wondered at, when the time in which it was printed is considered. The Letter to General Ireton, which Lord Orford calls "a model of brave, natural eloquence," has been often printed, but always, even by his lordship, incorrectly. By a mistake in the Press, this Letter is supposed to have been addressed to Oliver Cromwell. I am, &c. C. D.

LETTER to GENERAL IRETON, in answer to his Summons of the Isle of Man.

SIR; I have received your letter with indignation, and with scorn return you this answer, that I cannot but wonder whence you should gather any hopes that I should prove, like you, treacherous to my sovereign; since you cannot be in-sensible of the manifest candour of my former actings in his late majesty's service, from which principles of loyalty I can no whit departed. I scorn your proffer, I disdain your favour, I abhor your treason; and am so far from delivering up this Island to your advantage, that I shall keep it with the utmost of my power to your destruction. Take this for your final answer, and forbear any further solicitation; for if you trouble me with any more messages of this nature, I will burn the paper, and hang the messenger. This is the immutable resolution, and shall be the undoubted practice, of him who accounts it his chief glory to be his majesty's most loyal and obedient servant,

From Castletown,

DERBY.

July 12, 1649.

A DECLARATION of the right honourable JAMES Earl of DERBY, Lord STANLEY SCHANGE, of Knocking and of the Isle of Man, concerning his Resolution to keep the Isle of Man for his Majesty's service against all force whatsoever.—London: A. D. 1649.

Plausible beginnings are not always the forerunners of good ends. They may promise fair, but it is the end that either crowns all undertakings with reputation or adds them with shame; making a most exact discovery of the undertaker's intentions, whether good or evil. Many honest-meaning men, who eight years since viewed the face of the Parliament's actions, and judged of their integrity, their protestations and declarations, entertained a very charitable and honourable opinion both of them and their cause, and therein thought not too much to hazard both their lives and estates with them, who are long since sat down in the chair of repentance, having by sad experience found their large pretences to prove but the shadows of weak performances, and their greatest labours to produce no other effects than to burden this distracted nation with unheard-of tyranny and miserable oppression. But they that beheld their actions, even in their primitive and best times, with a considerate and judicious eye, did easily perceive them to pursue their own ambitious ends more than the welfare of this miserable land; that they were men

whose thoughts were filled with blood, and judged them through pretence of zeal to be wolves in sheep's cloathing and what better could be expected from the illegal proceedings of those men who presumed from servants to become masters, but that they should endeavour to bring in Democracy, and abolish Monarchy, their actions being altogether such as must needs produce strange effects, and set open the flood-gates of ruin to overflow this kingdom.

For my own part, I have with my utmost power and skill taken most perfect and exact notice of all their proceedings, from their first beginning of entrance into action unto this day, and therein can find nothing but a large comment upon that text of Samuel, "Rebellion is as the sin of witchcraft." I sat in their house of peers more than a full year, till finding their courses to be so strangely unparliamentary, I was constrained, with divers others of the loyal nobility, to forsake the house, and repair into my country, being truly ashamed to bear any part in their rebellious enterprizes, wherein they have proceeded with such impudent violence, that they have plundered and ruined all the ancient nobility and gentry of this kingdom, fought many desperate and bloody battles against their sovereign, his children, and subjects, imprisoned his sacred person, and not only so, but, that they might outgo all their predecessors in rebellion, and become unprecedented therein, they clouded the very rays of sacred majesty, in bringing the royal owner of the throne to their Bar of Injustice, and beyond all that, upon a scaffold, at high noon-day, in the face of the world, as a malefactor, before his own court-gate, in his usual place of recreation, after a most shameful manner, by the hands of the common hangman, inhumanly murdered their sovereign, unheard the Lord's anointed, and not contented with his blood, in prosecution of their most deadly and implacable malice, have since, to the utmost of their power, endeavoured to stain the candour of his royal name, in fixing thereon the ignominious brands of Liant, Traitor, and Murderer styling him, in all their prints, the grand and capital Enemy of the kingdom, and laying their guilt of all the blood that hath been shed upon his innocent shoulders and beyond all this, have quite discarded, banished, and cashiered, all the royal issue, and solemnly proclaimed our present dread sovereign lord, King Charles the Second, and his princely brother the Duke of York, traitors, in the usual places, to the amazement and detestation of the whole world.

And whereas there hath been of late some overtures made to me by one Henry Ireton, who stiles himself Commissary General of their army, whom his manners stiles the Parliament of England, in whose name and for whose service, he demands that I deliver up this Isle of Man, and for a grateful acknowledgment of that service, he engages on their part that I shall have an act of indemnity for all that I have

done, and my lands to be restored to me without composition, and upon my engagement not to oppose the proceedings of the Parliament in their present government, I shall peaceably and quietly enjoy the same; in answer to which I declare, that according to the dictate of my own conscience and reason, and according unto the obligation I stood engaged unto his majesty my late dread sovereign, as well by my common allegiance as by my more particular duty of personal service, in the beginning of these unhappy differences and divisions of the kingdom, I engaged myself on his majesty's party, wherein I have constantly persevered, either in acting or suffering, until this day, concurring with those of the contrary party only in hating detestable neutrality.

According to my best ability I did diligently execute all such commissions as I did receive from his majesty, and did always use my utmost endeavour to retain the people in their due obedience unto him, as I shall ever faithfully practise towards my present sovereign, his son holding myself bound unto him in the same bonds of allegiance and loyalty as I was to the late king, of ever-blessed memory, his father; and do hereby declare, that I do from my very soul abhor all base compliance with any of his majesty's enemies, whether foreign or domestic. And particularly if I could endure to be treacherous, I would never do it with the prevailing party in England, whom I know to have renounced all principles of civility, honour, honesty, and conscience, and whose engagements, vows, protestations, and oaths, I would not take as security for the least atom of dust on which I tread. And I do protest, in the presence of God and the whole world, that in balance to my allegiance, honour, and conscience, I scorn their pardon in reference to any thing I have acted or shall act hereafter and I value my estate no more than the most contemptible mote that flies in the sun.

And I do hereby declare, that, to the utmost of my power, I shall faithfully endeavour to hold out this Island to the advantage of his majesty, and the annoyance of all rebels and their abettors, and do cheerfully invite all my allies, friends, and acquaintance, all my tenants in the counties of Lancaster and Cheshire, or elsewhere, and all other his majesty's faithful and loyal subjects, to repair to this Island as their general rendezvous and safe harbour, where they shall receive entertainment, and such encouragement as their several qualities and conditions shall require, where we will unanimously employ our forces to the utter ruin of these matchable and rebellious regicides, and the final destruction of their interest both by land and sea. Neither shall any apprehension of danger, either to my life or estate, appal me; but I shall on all occasions (by God's assistance) shew myself ready to express my duty and loyalty with the hazard of both and this I shall adventure for the future with more alacrity, forasmuch as, in all my former actings in his majesty's service, I never did any thing, with rela-

tion to the trust reposed in me, that awakens my conscience to repentance. DERBY.

From Castletown, in the Isle of Man, July the 18th, 1649.

"What reward his son had for this famous Earl's loyalty, will appear by the following Inscription, fixed by the present Earl of Derby on a building erected at Knowsley, his seat in Lancashire :

'JAMES EARL OF DERBY, LORD OF MAN AND THE ISLES, GRANDSON OF JAMES EARL OF

'DERBY, AND OF CHARLOTTE DAUGHTER OF 'CLAUDE DUKE DE LA TREMOUILLE, WHOSE 'HUSBAND JAMES WAS BEHEADED AT BOL- 'TOB, XV. OCTOB. MDCLII. [so in the book] 'FOR STRENUOUSLY ADHERING TO CHARLES 'THE SECOND, WHO REFUSED A BILL PASSED 'UNANIMOUSLY BY BOTH HOUSES OF PAR- 'LIAMENT FOR RESTORING TO HIS FAMILY 'THE ESTATE LOST BY HIS LOYALTY TO HIM. 'MDCCXXXII.' [So in the book]. \*

Tindal's *Rapin*, fol. ed. 1743, vol. 2, p. 586, note (c).

# 191. The Trial of Major RICHARD FAULCONER, at the Upper Bench Bar in Westminster-hall, upon an Indictment for Perjury : 5 CHARLES II. A. D. 1653.

THIS Trial, in the former Editions, appears to have been extracted from a Tract, entitled,

A true and perfect NARRATIVE

Of the several Proceedings in the Case concerning the LORD CRAVEN, before the Commissioners for Sequestrations and Compositions sitting at Haberdashers-hall, the Council of State, the Parliament : And upon the Indictment of Perjury, preferred and found against Major RICHARD FAULCONER, the single and material Witness against the Lord Craven, concerning the Petition to the King of Scots, which as the said Faulconer pretended, was promoted at Breda by the Lord Craven, and wherein, as the said Faulconer deposed, the Parliament of England was styled by the name of

"Barbarous and Inhuman Rebels."

Shortly after which Oath, the Lord Craven's Estate was voted by Parliament to be confiscated. \*

London : Printed by R. White, 1653.

The whole of this Narrative together with the Preface to it, is here given.

TO THE READER.

At the Trial of Richard Faulconer, upon an Indictment of Perjury at the Upper Bench bar in Westminster-Hall, in the Case of the Lord Craven, it was there publicly pleaded on his behalf : "That there was nothing objected against the credit of Faulconer, so long as there was any other stone to turn, though there were endeavours in Parliament before the Lord Craven's Estate came to be sold, to prevent the sale thereof : And therefore when all refuges failed, if they can undermine the credit of this man, then they hope to undermine the Act of Parliament : And that after many transactions, and settlements grounded upon this man's Information, now must he be blasted by an artificial Indictment a great while after."

These passages thus let fall by : those who

(it seems) had not perfect knowledge of the proceedings in Parliament, in the Lord Craven's Case, might with some of the, auditory, at so great a Trial, pass as certain truths : it is therefore thought necessary to publish a Narrative, to clear those mistakes ; and yet it must be acknowledged that no exception was taken either to the person of Faulconer, or to the matter contained in his deposition against the Lord Craven, before the Votes of Confiscation of the Lord Craven's Estate did pass ; for that it was impossible for the Lord Craven, being near 800 miles distant in Germany when those Votes did pass, to be here upon an hour's warning, to make his exception to Faulconer's Deposition : the Parliament passing the Votes of Confiscation the same day Faulconer's Deposition was reported and read in parliament : neither the Lord Craven, nor any on his behalf being then heard or summoned to be heard, nor could any on his behalf procure a copy of the Depositions, before the Votes of Confiscation : it is therefore held requisite more particularly to make known the several transactions in this business, and what application hath been made from time to time unto the Parliament, by, and on the behalf of the Lord Craven, after the confiscation, and before the Bill for Sale of the Lord Craven's Estate did pass, that the falsity of this man's Oath might be examined in Parliament, or such other way as the Parliament should please to direct and appoint ; which the Parliament, after many applications to that purpose, not thinking fit to give way unto ; an indictment of Perjury was preferred in London against the said Faulconer, the Parliament sitting, and the Indictment found by the Grand-Jury, and the parliament made acquainted therewith before the Bill for Sale of the Lord Craven's Estate did pass ; and at the Sessions when the said Indictment was found, Faulconer might have been also tried, had not the principal witness against Faulconer been committed by captain Bishop, after he was served with a Subpoena to give testimony against Faulconer, and kept in prison from the first day of the sessions, till the

sessions was over, and then set at liberty and before the next sessions the Bill for Sale of the Lord Craven's Estate did pass.

And forasmuch as the said captain Bishop (the prosecutor of the Lord Craven, and contractor for a good part of his Estate) appeared more than a witness at the Trial of Faulconer, and hath since that Verdict endeavoured to obstruct Judgment upon the same, against so notorious and infamous a person: It is further thought necessary to publish the proceedings at the Trial of the said Faulconer, that the world (as well as the Jury) may judge of the credit of this man's testimony against the Lord Craven, upon which so heavy a Judgment as that of Confiscation was grounded: and with what indifference the said proceedings at the Trial are related, it is submitted to the Judgment of the gentlemen of the several Inns of Courts, and practicers of the law then present in Court, and to all others who heard and took Notes at the said Trial.

ANTH. CRAVEN.

#### A NARRATIVE of the Proceedings in the LORD CRAVEN'S Case.

Major Richard Faulconer being employed as a spy into Scotland, at his return gave information to captain George Bishop, then Secretary to the Committee of the Council of State for Examinations, against William lord Craven: which information being prepared and reduced into writing by captain Bishop, the Commissioners at Haberdashers-Hall were sent for to White-Hall, to administer an oath there unto the said Faulconer, who came accordingly: and upon the 10th of February 1651, the said Faulconer was sworn before the said commissioners to the Information following, viz.

The INFORMATION of major Richard Faulconer of Westbury in Hampshire, taken before Samuel Moyer, James Russel, Edward Winslow, Josias Barners, and Arthur Squib, esquires, Commissioners for Sequestrations and Compositions, upon Oath.

Who saith, That about a fortnight before the conclusion of the Treaty at Breda, the lord Craven, the queen of Bohemia and her two daughters, came to Breda to the Scots king Charles, and went not thence till the king went to Housleidke, a house of the prince of Orange's. That during that time, this informant saw the Lord Craven divers times in presence with the said king, and every day with the said king at the court there, he being there with the queen of Bohemia and her two daughters, to take 'their leave' (as they said) of the king of Scots before he went to Scotland: that several officers, about 30 in number, made a Petition to the said King, to entertain them to fight for him against the commonwealth of England, by the name of "Barbarous and Inhuman Rebels," either in England or Scotland, for the recovering of his just rights, and reinstating him in his throne, and deputed this Informant and colonel Drury to

present the said Petition, who indeed drew the same. That when the informant and some other officers came to the court at Breda, intending to present the said Petition immediately to the king's hand; but finding the lord Craven very near to him, likewise the marquis of Newcastle, who presented his brother sir Charles Cavendish to kiss the said king's hand the evening before the said king's departure, who this informant saw kiss the king's hand accordingly; the lord Wilmot, the earl of Cleveland, the queen of Bohemia, the lord Gerrard, &c. and a great bustle of business; this informant, with colonel Drury, applied themselves to the lord Craven, intreating him to present the Petition to the queen of Bohemia, to present it to the king of Scots; the said lord Craven taking the Petition, and reading the same cheerfully, said to colonel Drury and this informant, "There is the queen of Bohemia, deliver it to her, and I will speak for you;" upon which they applied themselves to the said queen, and she presented the Petition; after which the king of Scots, the lord Craven, the marquis of Newcastle, the queen of Bohemia, with some other lords, went into a withdrawing room, where this informant and company could not enter; but the lord Craven came forth of the withdrawing chamber, and told this informant and company, "That they should receive an answer from the queen of Bohemia to their Petition, and that he had spoken to the queen of Bohemia in their behalf," who afterwards came and told this informant and company that she had delivered their Petition, and that the king had taken order for it. The next morning at three of the clock the king departed, but this informant and company had their quarters satisfied by the princess of Orange, according to the said king's order upon their Petition, and thereby to enable them to follow the said king in the prosecution of these wars against the parliament of England, which was the effect of their aforesaid Petition: that this informant saw the lord Craven very often and familiar with the said king, and enter with the said king into the withdrawing chamber, and stayed there, the last night the said king was at Breda, very late.

RICHARD FAULCONER.

Jur. 10 Feb. 1651. *Coram nobis*, Samuel Moyer, James Russel, Edward Winslow, Josias Barners, Arthur Squib.

Colonel Hugh Reily was likewise sworn before the said Commissioners at the same time, whose Information was in these words:

The INFORMATION of Colonel Hugh Reily, taken before Samuel Moyer, James Russel, Edward Winslow, Josias Barners, and Arthur Squib, esquires, Commissioners for compounding, &c.

Who saith, That during the late Treaty at Breda, this informant did oftentimes see the Lord Craven with the now king of Scots in

his bed-chamber, and also walked abroad with him, there being no man more conversant with the king than he. That the said Lord Craven during the said treaty, did twice go to Rotterdam and Dunhagh, and back again, being employed, as was commonly reported at court there, by the said king. That the said Lord Craven had a charge from the king to look to one Mrs. Barlow, who (as is reported and he believes to be true) had a child by the King of Scots, born at Rotterdam; which he did: and after the king was gone for Scotland, the said Lord Craven took the child from her, for which she went to law with him, and recovered the child back again, as is reported.

HUGH REYLY.

*Jur.* 10 Feb 1651. Samuel Moyer, James Russel, Josias Barners, Edward Winslow, Arthur Squib.

Feb. 20. Captain Thomas Kitchingman was ten days after sworn before the said Commissioners, whose Information was as followeth, viz.

The INFORMATION of Captain Thomas Kitchingman, taken upon Oath before the Commissioners for Compositions, &c.

Who saith, That the said captain Thomas Kitchingman in April and May, 1650, saw the lord Craven several times with the king of Scots at Breda, and waiting upon the said king several times at his table at Breda; this informant also saw the earl of Oxford at the same time with the king of Scots at Breda, waiting upon the said king at his table; and saw the lord Craven, and the earl of Oxford, many times go into the withdrawing rooms after the said king; this informant also saw the lord Craven, and the earl of Oxford, in the bowling-ally in Breda Castle with the said king.

THOMAS KITCHINGMAN.

*Jur. coram Commissioners.* Feb. 20, 1651.

Sir William Craven having notice that the lord Craven's Estate was in danger of sequestration; and considering that himself and his children, by Elizabeth, daughter to Ferdinand, lord Fairfax, upon whom a great part of the said estate was settled, were like to be concerned therein; desired Mr. Rushworth to go with him to the Commissioners at Haberdashers-Hall, and to desire a copy of the Charge against the lord Craven, and accordingly a copy of the Depositions taken against the lord Craven was demanded by sir William Craven, and Mr. Rushworth; to whom Mr. Moyer in the name of the rest of the commissioners, answered; That they had not fully considered of the Informations against the lord Craven; but said that very speedily a copy of the Charge should be delivered, and power should be given to the lord Craven to examine and cross examine witnesses; whereupon at that time they departed, being confident that they should never be deprived by those commissioners of that common justice of being heard before condemnation.

March 4, 1651. The commissioners at Haberdashers'-Hall, having taken into consideration the said Informations of Faulconer's, Reyly's, and Kitchingman's, were not satisfied in their judgments that they could sequester the lord Craven thereupon; wherefore they presented their doubt in that case to the Council of State, which Doubt or Quere of theirs, as it is recorded, and recited in an Order of the Council of State, was as followeth:

"Tuesday, 4 Martij, 1651. At the Council of State at White-Hall. Upon perusal of the Depositions touching the lord Craven, presented to this Council from the Commissioners for Sequestrations, &c. sitting at Haberdashers'-hall; and of their Certificate, wherein they mention that they have given orders for the seizing and securing the said lord's estate, but offer it as a doubt, whether the parliament hath made it matter of Sequestration for any person living beyond the seas, to hold correspondence with, or repair to the person of the now king of Scots, when he was beyond the seas; and desire it may be offered to the parliament for a rule, which may enable them to proceed to sequestration in that and other cases of like nature: It is ordered by the Council, that Mr. Attorney General do report this matter to the parliament; and in respect the retarding of sequestrations, where persons may be esteemed justly sequestrable, tends much to the prejudice and disadvantage of the state, to desire that the parliament will be pleased to give some directions therein for the expediting of justice in this and the like cases.

ER GUALTER FROST, Secr."

March 6, 1651. Mr. Prideaux, Attorney General, makes his report to the Parliament according to the directions of the said Order, which report of his is entered in the Journal Book, agreeing verbatim with the Order of the Council of State of the 4th March, and he also made a report of the three Informations before mentioned (viz.) Faulconer's, Reyly's, and Kitchingman's, all which were distinctly read by the clerk, and after some debate these Votes following did pass against the lord Craven unheard, and not having any other charge against him.

"Resolved by the Parliament, 1. That the lord Craven is an offender against the commonwealth of England, within the Declaration of the 24 Aug. 1649, entitled 'A Declaration of the Commons assembled in Parliament, declaring all persons who have served the parliament of England in Ireland, and have betrayed their trust, or have or shall adhere to, or aid and assist Charles Stuart, son to the late king, to be traitors and rebels.' 2. That the estate of the lord Craven be confiscated accordingly. 3. That the commissioners for compounding be impowered and required to seize and sequester all the estate real and personal of the said lord Craven, and to receive the rents, issues and profits thereof to the use of the commonwealth. 4. That the Commis-

sioners for compounding be impowered and required to seize and sequester into their possession, the real and personal estate of all such persons as shall appear to them to be offenders within the Declaration of the 24th August 1649, aforesaid; and to receive and take the rents, issues and profits thereof, to the use of the Commonwealth.

HEN. SCOBEL, *Cler. Parl.*"

Which Declaratory Vote of the house, of commons, of the 24th of August, 1649, followeth in these words, viz.

"Resolved upon the question by the Commons assembled in parliament, That this house doth declare that all persons, whether English or Scots, who have been under the pay of the parliament of England in the service of Ireland, and have revolted and betrayed their trust there, and all other persons who have or shall adhere to, or assist Charles Stuart, son of the late king, or any the forces in Ireland against the parliament of England, are, and be adjudged to be traitors and rebels to the commonwealth of England, and all their estates shall be confiscated, and their persons proceeded against as traitors and rebels; and that all such officers as have so betrayed their trust, be proceeded against by a court-martial there."

Sir William Craven and master Rushworth repaired again to the commissioners at Haberdashers Hall, and demanded a copy of the Informations against the lord Craven, to the end that he might be heard before he was condemned; for that they understood the Commissioners had seized and sequestered his Estate, and did purpose to sequester the same.

Master Moyer returned this answer: "That it was not usual with them to condemn any man unheard, that they had a full purpose to have given liberty to the lord Craven to make his Defence to the Informations given against him, but now their hands were tied up, for the Parliament had voted his Estate to be confiscated; and they were required to sequester all the Estate real and personal of the lord Craven's, to the use of the commonwealth."

Hereupon master Rushworth forthwith repaired to the Parliament, to inform himself of the proceedings against the lord Craven there: took a copy of master Attorney General's Report, the Informations aforesaid, and the votes of Confiscation thereupon; and immediately a Petition was drawn on the behalf of the lord Craven, in the name of sir William Craven, and James Pickering, esq commissioners intrusted by the lord Craven for the management of his Estate, which from the 12th of March to the 12th of June 1651, they endeavoured by their friends to get delivered in parliament, but could not obtain it, until the said 12th of June, that the house took into consideration the first Bill of Sale of Delinquents Estates. When the lord Craven's name being propounded to be inserted into the bill, it gave

a handsome opportunity to that member of the house, who had so long attended to deliver the said Petition, to get the same delivered; which Petition then presented and read, was in these words, viz.

To the Supreme Authority of this nation, the Parliament of the Commonwealth of England. The humble Petition of sir William Craven, knt., and James Pickering, esq, commissioners deputed by the lord Craven, for the managing of his Estate in his absence,

"Humbly sheweth, That your petitioners are informed that by a late Vote of this honourable house, the lord Craven is declared an offender within the Declaration of the 24th of August 1649. Whereby his Estate is made liable to confiscation, and the commissioners for compounding are impowered and required to seize and sequester all the estate real and personal of the said lord Craven; that the lord Craven being beyond the seas in Germany, at the time of the passing of these Votes, knoweth nothing of the Votes against him here in England, and your petitioners being desirous to discharge their trust, in giving his lordship timely notice of the said proceedings against him, do humbly pray on the behalf of the said lord Craven, that your petitioners may be permitted to send an express unto his lordship, to acquaint him with the said Votes; and that this honourable house would be pleased in the mean time, as to the confiscation of his estate, to suspend their former Order. And your petitioners shall pray, &c."

Upon the reading of this Petition the House thought not fit to make any Order to suspend the Votes of Confiscation, or to give leave to send an express.

The Parliament afterwards falling again upon the debate of the first Bill of Sale for Delinquents Estates, it was then propounded that the house would give leave to speak against the former Votes of Confiscation of the lord Craven's estate, upon which the house was divided; 24 were for resuming the debate, and 25 were against it; so it was carried by one Vote only not to resume the consideration of the said Votes of Confiscation. The Votes which passed that day in parliament were as followeth (viz.)

Thursday July 3, 1651. The question being propounded that leave be given to take the Vote touching the lord Craven into consideration again, it passed in the negative.

"Resolved by the parliament, that a Summons do issue forth for William lord Craven, requiring him to appear personally at such time as the parliament shall appoint, to answer such matters as shall be objected against him, on the behalf of the Commonwealth of England: That the place of his appearance be at the Parliament of the Commonwealth of England: That the day of his appearance be on the 3rd of Sept. 1651."

A draught of the Summons to be signed by Mr. Speaker was this day read and agreed unto in these words. "By authority of the parliament of the Commonwealth of England, These are to command and require William lord Craven, to make his personal appearance before the parliament of the Commonwealth of England, upon the 3rd day of Sept. 1651, there to make answer to all such matters as shall be objected against him on the behalf of the Commonwealth of England, whereof he is not to fail at his peril, dated at Westminster this 3rd day of July 1651. Ordered by the parliament that the sergeant at arms attending the parliament do proclaim this Summons in Westminster-hall.—Ordered that this Summons be likewise printed, and that the sergeant at arms do cause the same to be set up at the Old Exchange London, and other places convenient for the publication thereof. H. SCOBEL, *Cl. Parl.*"

The said Vote of Summons being past 4 months after confiscation, whereof the lord Craven had no notice, yet having got information of some former proceedings, in the parliament, against him and his estate, when he was far remote in Germany, did thereupon send a Petition by the foreign post, under the cover of the Dutch packet, directed to the parliament, which was delivered the latter end of August 1651, by the Dutch agent, then resident at London, to Mr. Speaker, and by Mr. Speaker faithfully presented to the parliament before the 3rd of Sept. 1651, but the parliament thought not fit to permit the same to be read; by reason there was none present who could testify they did see the lord Craven subscribe the same, and give directions for the delivery thereof; which Petition remains in the hands of Mr. Scobel, clerk of the parliament, and was as followeth:

To the Parliament of the Commonwealth of England: The Humble Petition of William Lord Craven.

"Humbly sheweth; That the Petitioner, notwithstanding his care and endeavour to avoid giving any cause of offence to the parliament, hath nevertheless been so unfortunate, as to meet with those who by false and calumnious Informations have practised to beget an ill opinion in this honourable assembly of the Petitioner, and thereby as much in them lieth, to work his absolute ruin, with the falsity of their suggestions; The Petitioner doubteth not to make manifestly appear, by divers witnesses and circumstances conducing to the clearing of the truth; but in regard the present conjuncture of affairs here doth not permit him to come in person, he doth most humbly beseech the parliament, to be so favourable unto him, as to give way he may by his friends and counsel be permitted to answer and set forth the truth and circumstances, not doubting but by this means he shall be able to clear his innocency, and give satisfaction to this honourable house. And your Petitioner shall pray, &c.

WILLIAM CRAVEN."

The lord Craven hastens from Germany into Holland, and sends a duplicate of his former Petition by the hands of Mr. Peter Wilkin, a gentleman formerly of the earl of Essex and lord Fairfax's life-guard, a person of very much merit and faithfulness to the parliament; who immediately after he had his dispatch, fell sick beyond sea, and died there: the lord Craven being much troubled at his disaster, frames a new Petition, and sends the same over into England in October 1651, subscribed with his own hand, which Petition, with the duplicates thereof so subscribed, as aforesaid, remained in the hands of several members of parliament, each of whom were desired to take the first opportunity that was offered to any of them, to present the same; Who from Octob. 1651, until 22d of June, 1652, though they often endeavoured to, and were daily attended therefore by Mr. Rushworth for above 7 months together, could not prevail to get the Petition read in parliament: And then the house falling into a debate of an additional act for sale of delinquent's estates, and the lord Craven's name being propounded to be inserted therein, gave a seasonable opportunity to have the lord Craven's Petition read; which was in these words:

To the Supreme Authority, the Parliament of the Commonwealth of England; The humble Petition of William Lord Craven;

"Humbly sheweth; That upon the Information of major R. Faulconer, who acknowledged, That himself and another drew the Petition to the king of Scots against the Commonwealth of England, and that the Petitioner promoted the delivery thereof, and upon the information of captain Thomas Kitchingman, and one Hugh Keyly, that the Petitioner was at Breda with the said king, and upon a vote of 21th of August 1649, whereby it was declared, that those who had been under pay of the parliament of England in the service of Ireland, and revolted and betrayed their trust, and all others who did adhere to the son of the late king, or any of his forces in Ireland, should be adjudged traitors, and their estates to be confiscated, and their persons to be proceeded against as traitors.—Thereupon the 6th of March 1651, it was voted in parliament, that your Petitioner is an offender within the Declaration aforesaid, and that his estate be confiscated, and that the commissioners for compounding be required to seize and sequester the same, which they have done accordingly, and have ever since received the rents and profits of all his lands, and have sold his cattle and goods.

"The Petitioner saith, he is not guilty of the matter charged upon him, and humbly desireth it may be taken into consideration. 1. That he went with consent of parliament beyond the seas before the war broke forth in England, and hath been there ever since attending his charge. 2. That he went not to the king of Scots into Holland, but that the king came to Breda, whilst he was there upon



his employment, where his residence by command then was. 3. That the material information is upon a single testimony, of one who confesseth himself the principal contriver of that treason, whereof he accuseth the Petitioner to be an abettor, and besides is mainly disproved and contradicted in divers parts of his testimony, and proves not any word or deed of the Petitioner, not against the parliament. 4. That the Petitioner during all the time of these late wars and differences in England, did never engage, or in the least manner appear against the parliament of England. 5. That the persons that accuse him were utter strangers to him, and the promotion of their Petition no way concerned him. He humbly therefore offers to your honours' consideration, how unlikely it should be that your Petitioner should hazard himself and his estate in England, which was known to be considerable, in so unnecessary and unprofitable a business, and so much contrary to all his former deportments.

"Wherefore the Petitioner humbly begs the favour of this honourable assembly, that his case may be considered, and that this honourable assembly would be pleased to put his business into such a way, as that he may be heard by his counsel, not doubting but thereby this honourable assembly shall receive so good an account of your Petitioner's candid deportment, as may fully satisfy your honours. And your Petitioner shall ever pray."

At the same time a Member of the house delivered a Petition in the name of sir William Craven, and sir Edmund Sawyer, giving notice of some new Information to disprove Faulconer's testimony, which Petition the said member moved, that it might be read, and delivered it to the clerk accordingly to be read, immediately after the reading of the lord Craven's Petition, but the parliament thought not fit to permit the reading thereof, which Petition remains with Mr. Scobel, clerk of the parliament, and was in these words, viz.

To the Supreme Authority of this nation, the Parliament of the Common-wealth of England: The humble Petition of sir William Craven, and sir Edmund Sawyer, knights, on the behalf of William lord Craven,

Humbly sheweth, That they having been a long time trusted in the affairs of the said William lord Craven, have for these many months attended upon the parliament, to get a Petition of the said William lord Craven's presented, in which his humble desire is, that he may be heard; That of late it hath come to their knowledge that the Information given in by Faulconer (the single witness, and against the lord Craven in the material parts of his accusation), is altogether untrue, and that it will be so made appear by several witnesses then upon the place with the said Faulconer, and now in town; and particularly by col. Drury, whom the said Faulconer mentioned in his accusation to be deputed with him to deliver the said Petition; who, as your Petition-

ers are informed, can produce the first original draught of the said Petition, of the said Faulconer's own hand writing: whereby it will appear (as your Petitioners are likewise informed) that there was not the least mention of the parliament or commonwealth of England, nor any such expressions as are mentioned in the said Faulconer's Information, which your Petitioners thought themselves bound in conscience to acquaint the parliament with, that their justice might the more clearly appear in a thorough examination of this business, in such way as they in their wisdom shall think fitting. And your Petitioners shall pray, &c."

Afterwards the question being put upon reading the aforesaid Petition of the lord Craven, whether he should be put into the Bill of Sale, to have his estate sold, it was carried only by two voices, that his estate should be sold, there being 33 for the sale thereof, and 31 against it. The Votes which passed that day, are as followeth:

"Tuesday, June 22, 1652. The House this day resumed the debate upon the Amendments of the additional Act for Sale of Estates forfeited to the commonwealth for Treason. The question being propounded, That William lord Craven be put into this Bill for his lands to be sold, and the question being put, That this question be now put, it passed with the affirmative. And the main question being put, That William lord Craven be put into this Bill for his lands to be sold, it was resolved by the parliament, that William lord Craven be put into the Bill for his lands to be sold."

The Parliament not thinking fit upon the said Petition of sir William Craven's, and sir Edmund Sawyer's, to permit the business concerning the lord Craven to be put into a way of examination, and the Bill for Sale being likely to pass within few days, there was a necessity put upon the prosecutors on the behalf of the lord Craven, to resort to the good laws of England for remedy; And thereupon, and not before, an Indictment was drawn in order to the conviction of the said Faulconer of Perjury, which Indictment was the 12th day of July, 1652, delivered to the Grand Jury at Guild-Hall, London; The copy of which Indictment was as followeth:

*An Indictment of Perjury against Faulconer.*

Lord. ss. Be it remembered, that at the general quarter-sessions of the public peace holden for the city of London, at the Guild-hall of the same city, on Monday the 14th day of July, in the year of our Lord 1652, before John Kendrick mayor of the city of London, Thomas Atkin, Thomas Andrews, and Thomas Foot, aldermen of the same city, and others their fellow justices assigned to keep the public peace in the city aforesaid: And also to hear and determine divers felonies, trespasses and other misdemeanors committed within the same city, by the oaths of Robert Dawks, John Harvey, William Pitcher, Pelham Moore, George Boddington, Thomas Pearson, Joseph

Ruthorn, Samuel Coleman, Richard Payn, John Drafgate, Robert Trollasse, Richard Bartholmew, John Robinson, Robert Alkington, and Thomas Wilmer, good and lawful men of the city of London, then and there sworn and charged to inquire for the Keepers of the Liberty of England by the authority of parliament, and the body of the city aforesaid, it is presented that the Bill following is true.

*Lond. ss.* The Jurors for the Keepers of the Liberty of England by authority of parliament upon their oath do present, That Richard Faulconer of Westbury in the county of Southampton, gent. not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, and minding and endeavouring to bring the right hon. William lord Craven, baron of Hamstead, marshal in the county of Berks, in danger of the loss of his life, and of the sequestration, confiscation, forfeiture of all his lands, goods, and chattels within this commonwealth of England, the 10th day of February, in the year of our Lord God, 1650, at the parish of Mary Stainings, in the ward of Cripplegate, London, before Samuel Moyer, esq.; James Russel, esq.; Edward Winslow, esq.; Josias Barners, esq.; and Arthur Squib, esq.; then being Commissioners for compounding with Delinquents, and for managing of all and every the Estates of Delinquents and Popish Recusants; that the 15th day of April, in the said year of our Lord, 1650, were, or then after should be under sequestration, did, upon the Holy Evangelists, corruptly, wilfully, falsely and maliciously, of his own proper act, consent and agreement, swear, and upon his corporal oath before the commissioners aforesaid on the said 10th day of February, in the said year, 1650, then having power to administer the said oath, then and there depose concerning the said lord Craven, in these English words following, that is to say; That about a fortnight before the conclusion of the Treaty at Breda, the lord Craven, the queen of Bohemia and her two daughters, came to Breda to the Scots king Charles, and went not thence till the king went to Honsleideike, a house of the prince of Orange's. That during that time, this informant saw the lord Craven divers times in presence with the said king, and every day with the said king at the Court there, he being there with the queen of Bohemia and her two daughters, to take their leave (as they said) of the king of Scots before he went to Scotland: That several officers, about thirty in number, made a Petition to the said king, to entertain them to fight for him against the Commonwealth of England, by the name of 'Barbarous and inhuman Rebels,' either in England or Scotland, for the recovering of his just rights, and reinstating him in his throne, and deputed this informant and colonel Drury to present the said Petition, who indeed drew the same. That when this informant and some other officers came to the Court at Breda, intending to present the said Petition immediately to the king's hand, but finding the lord Craven very near to

him, likewise the marquis of Newcastle, who presented his brother sir Charles Cavendish to kiss the said king's hand the evening before the said king's departure, who this informant saw kiss the king's hand accordingly; the lord Wilmot, the earl of Cleveland, the queen of Bohemia, the lord Gerrard, &c. and a great bustle of business; This informant, with colonel Drury, applied themselves to the lord Craven, entreating him to present the Petition to the queen of Bohemia, to present it to the king of Scots; the said lord Craven taking the Petition, and reading the same cheerfully, said to colonel Drury and this informant, 'There is the queen of Bohemia, deliver it to her, and I will speak for you;' Upon which they applied themselves to the said queen, and she presented the Petition; after which the king of Scots, the lord Craven, the marquis of Newcastle, the queen of Bohemia, with some other lords, went into a withdrawing room, where this informant and company could not enter; but the lord Craven came forth of the withdrawing chamber, and told this informant and company, 'That they should receive an answer from the queen of Bohemia to their Petition, and that he had spoken to the queen of Bohemia in their behalf,' who afterwards came and told this informant and company that she had delivered their Petition, and that the king had taken order for it. The next morning at three of the clock the king departed, but this informant and company had their quarters satisfied by the princess of Orange, according to the said king's order upon their Petition, and thereby to enable them to follow the said king in the prosecution of those wars against the parliament of England, which was the effect of their aforesaid Petition: That this informant saw the lord Craven very often and familiar with the said king, and enter with the said king into the withdrawing chamber, and staid there, the last night the said king was at Breda, very late; Which said oath, was the said 10th day of February, in the year of our Lord 1650, at the parish and ward aforesaid, reduced in writing, and taken before the said commissioners, then having sufficient and lawful power to administer the said oath, and to take the testimony and depositions of witnesses upon their oaths in such cases; Whereas in truth neither did the several officers, or any officer, make a Petition to the said king to entertain him or them to fight for him against the Commonwealth of England. Nor did several officers or any officer make a Petition to the said king to entertain him or them to fight for him against the Commonwealth of England, by the name of "Barbarous and Inhuman Rebels," either in England or Scotland. Nor did several officers or any officer make a Petition to the said king to entertain him or them to fight for him against the Commonwealth of England, by the name of, "Barbarous and Inhuman Rebels," either in England or Scotland for the recovering of his just rights, or reinstating him in his throne. Nor deputed he the said Richard Faulconer,

and col. Drury to present the said Petition, in the said oath mentioned; Nor did the said Richard Faulconer, with the said col. Drury, apply themselves to the said lord Craven, entreating him to present the said Petition to the said queen of Bohemia, to present it to the said king of Scots. Nor did the said Richard Faulconer, with the said col. Drury, entreat him the said lord Craven, to present the said Petition to the said queen of Bohemia, to present it to the said king of Scots. Nor did the said lord Craven take the said Petition, or read the same; Nor said unto the said Richard Faulconer and col. Drury, There is the queen of Bohemia, deliver it to her, and I will speak for you. Nor did the said lord Craven tell the said Richard Faulconer and company, in the said deposition mentioned, that they should receive an answer to their said Petition, or that he had been to the queen of Bohemia in their behalf, as the said Richard Faulconer in and by the said deposition hath deposed. And so the jurors aforesaid, upon their oath aforesaid, do say, That the said Richard Faulconer, in manner and form aforesaid, corruptly, wilfully, falsely and maliciously, of his own proper act, consent and agreement, did commit wilful, false, and corrupt perjury; To the great dishonour of Almighty God, and to the great damage, loss and injury of the said William lord Craven, and in contempt of the laws of this Commonwealth; To the evil example of all others in the like case of andine, and against the public peace, &c. SADDLER."

This Indictment upon the Testimony then produced upon oath, was accordingly found by the Grand Jury.

The same day that this Indictment was found, col. Drury, who had given evidence to the Grand Jury, repaired to Whitehall to captain Bishop, (having been formerly examined by him concerning the lord Craven,) and told him, that as he was that morning going down Holborn-Hill, he was served with a Subpoena to appear that day at Guild-Hall, London; and that he was examined there concerning the Information given by Faulconer, against the lord Craven; and that after he was sworn before the Lord Mayor, he gave the same evidence to the Grand Jury which he had formerly given to captain Bishop upon his examination: Whereupon the said captain Bishop took the writ under seal out of his hand, with which he was served to appear, and said to Drury, 'How durst you be examined against the Commonwealth, and not acquaint me first therewith?' and said further, 'Mr. Mayor,' meaning the Lord Mayor, 'had better have done something else, than to have suffered that Indictment to be found;' and immediately calls for a messenger, and commits the said Drury to the custody of one Middleton, a messenger to the Council of State, who forthwith carried Drury away prisoner into the Strand, to the house of the said Middleton, where the said Drury was kept by him in strict custody, from Monday that the

Indictment was found, and the sessions begun, till Saturday, that the sessions was past; by which restraint of Drury, who had Faulconer's own hand-writing to produce against himself, and being otherwise the most material witness against Faulconer, there could be no further prosecution upon that Indictment that sessions, and before the next sessions the bill for sale of the lord Craven's estate did pass.

After the preferring and finding of this Indictment, several businesses of public concernment did interrupt the parliament's present passing of the bill for sale: So that the parliament had several debates upon the said act, and the 20th of July the said bill being committed to a committee to fill up the full number of 50 persons, and to present their names unto the house, Mr. Rushworth attended with a Petition in the names of sir William Craven, and sir Edmund Sawyer, and caused the same to be presented unto that committee then sitting in the Speaker's Chamber in the Parliament house, therein taking notice that the Indictment of Perjury was found; which Petition was as followeth:

To the Honourable the Committee of Parliament, appointed to consider of the Names of several Persons, to present to the Parliament, whose Estates may be forthwith sold. The humble Petition of Sir William Craven, and Sir Edmund Sawyer knights, who have been Commissioners long intrusted by the Lord Craven in the management of his Estate.

"Humbly sheweth; That your Petitioners in their Petition presented to the parliament about a month since, and remaining in the clerk's hand, did most humbly beseech them, that they would be pleased to permit such testimony to be produced, not only by witnesses, but by writing under the hand of Richard Faulconer (the single and material witness against the lord Craven, as to the Petition mentioned in Faulconer's Deposition) which they hoped would make it clearly appear unto the parliament; that the information given by the said Faulconer (upon which the vote which then passed for the confiscation of the lord Craven's estate, is chiefly grounded) is altogether false and true in all the material parts of his examination.

"That the parliament not thinking fit to permit the said Petition (presented as aforesaid) to be read, the said Faulconer is since indicted of Perjury, and the grand jury have accordingly found the same.

"That a Warrant was accordingly obtained to apprehend the said Faulconer, thereby intending to have brought him to his speedy trial, (all perjuries being excepted by the Act of Oblivion) but one of the chief witnesses against the said Faulconer, who gave evidence to the grand jury, being since restrained of his liberty, was the only obstruction, why in a legal course the law was not prosecuted against the said Faulconer this last sessions at Newgate,

"Your Petitioners humbly beseech you, that you would be pleased to present to the parliament the consideration of the whole matter; that this business may be further and speedily examined in parliament, or otherwise, as they in their wisdom shall think fitting, and that in the mean time the lord Craven may be omitted out of the present bill of sale. And your Petitioners shall pray, &c."

This Petition was delivered to Alderman Allen, then chairman to the Committee sitting in the Speaker's Chamber, upon the Bill for Sale; and word was sent up with the said Petition, that there were some attending at the door to avow the same, and accordingly the Petition was read at the Committee, but they thought not fit to take any notice of the information therein given, nor to report the same to the Parliament, that their pleasure might be known thereupon.

The Parliament again had in debate the said Act, upon a report thereof made by the lord Grey of Grooby, and passed many of the Amendments; whereupon it was much pressed by several members, that a Petition in the name of sir William Craven, and sir Edmund Sawyer, on the behalf of the lord Craven, might be read before the Act did pass; the house at that time thought not fit to hear the same, but declared, that before the bill was put to the question, the Petition should be read; and shortly after ordered the bill to be ingrossed, and to be brought into the house on Tuesday August 3.

Accordingly on that day the Speaker tendered the ingrossed Act to the house, to be put to the question, to pass as a Law, and the member of the house in whose hand the Petition remained, as he went into the house, was desired by the Petitioners to present the Petition, and to procure them to be called in to avow the same, for that they would make good every particular in the said Petition, and more, if need required, that what was therein contained; which said member went into the house, and accordingly presented the same, which was read by the clerk, and is remaining still in his custody, and was in these words:

To the Supreme Authority of this Nation, the Parliament of the Commonwealth of England: The humble Petition of Sir William Craven, and Sir Edmund Sawyer knights, who have been Commissioners long intrusted by the Lord Craven, for the managing of his Estate.

"Humbly sheweth; That your Petitioners in their Petition presented to the parliament above a month since, and remaining in the clerk's hands, did most humbly beseech them that they would be pleased to permit such testimony to be produced, not only by witness, but by writing under the hand of Richard Faulconer, the single and material witness against the lord Craven, as to the Petition mentioned in Faulconer's deposition, which they hoped would make it clearly appear unto the parliament, that the information given by the

said Faulconer, (upon which the vote which then passed for confiscation of the lord Craven's estate is chiefly grounded) is altogether false and untrue, in all the material parts of his examination.

"That the parliament not thinking fit to permit the said Petition so presented, as aforesaid, to be read, the said Faulconer is since indicted of Perjury, and the grand jury have accordingly found the same.

"That a Warrant was obtained to apprehend the said Faulconer, thereby intending to have brought him to his speedy trial, (all Perjuries being excepted out of the Act of Oblivion) but one of the material witnesses after he gave evidence to the grand jury, was the same day committed at White-hall to the custody of one Middleton, a messenger of the Council of State, and by him kept in strict custody till the sessions was ended, which was the only obstruction why in a legal course the law was not prosecuted at that time against the said Faulconer.

"Your Petitioners take the boldness humbly further to inform the parliament, that it appears by search in the books kept at New Prison and Newgate, That the said Richard Faulconer was committed first to New Prison and then to Newgate in April sessions 1651 upon suspicion of Felony, where he should have been tried for the fact, but that (as your Petitioners are informed, and hope to prove) there was a stop made to the said proceedings, merely upon an Affidavit, That he was in the parliament's service; besides it is well known, that the said Faulconer was altogether a stranger to the lord Craven, and hath since his coming over, lately confessed to testimony of good credit, that the lord Craven's deportment at Breda was altogether inoffensive as to the Commonwealth of England, and that he understood nothing of the said business, more than that a consideration was desired to be had of the present wants and great necessities of the Petitioners.

"All which your Petitioners humbly submit to the consideration of the parliament, beseeching you to omit the lord Craven out of the bill of sale, till this business be fully examined in parliament, or by a Committee, or such other way as you in your wisdom shall think fit, and until that other examinations taken by some, deputed by the Council of State, which (as is reported) tend to clear the lord Craven, be reported to the parliament, as well as those examinations have been, which seem to make against the lord Craven. And your Petitioners shall pray, &c."

After the reading of the said Petition, there was very great debate about the same, but none of the desires in the Petition were thought fit to be granted; and thereupon it was put to the question, Whether the lord Craven should stand in this bill, to have his land sold, and it was carried in the affirmative by three voices, there being 23 in the affirmative, and 20 in the negative. The votes which passed that day, were in these words following, viz.

"Tuesday August 3, 1652. A Bill for Sale of several lands and estates forfeited to the commonwealth for Treason, appointed to be sold for the use of the Navy, was this day read the third time.—The humble Petition of sir William Craven, and sir Edmund Sawyer knights, who have been Commissioners long intrusted by the lord Craven in the management of his estate, was this day read.—The question being put that William lord Craven do stand in the bill, it passed in the affirmative: Resolved by the Parliament that William lord Craven do stand in the Bill."

After the passing of these Votes, several members of the house were acquainted that a great part of the lord Craven's estate was entailed, and especially Comb Abby, a manor of the lord Craven's worth 2500*l.* per annum, entailed by John lord Craven upon sir William Craven, and the heirs male of his body, the very next in remainder (at this day) after the now lord Craven; which entail was had in consideration at the marriage of sir William Craven, with Elizabeth, daughter to Ferdinando lord Fairfax, the lord Craven then engaging not to destroy the same.

Thus much being intimated to several members of the house, it was answered by some of them, that special notice was taken of the entailing of this estate, and that a clause was added to this act, which was not in the former Bill for Sale, which would resolve the question; A copy of which Clause being procured, and agreeing with that which was afterwards in the printed Act, was in these words:

"And be it further enacted by this present parliament, and by authority thereof, That all reversions and remainders expectant upon any estate tail, upon any conveyance made by the said traitor or traitors, or any other person or persons, by or under whom they or any of them claim, of any the manors, lands, tenements or hereditaments of the traitor or traitors in this act, or in the aforesaid act for sale of several lands and estates forfeited to the commonwealth for treason, named, not actually vested in the possession of such tenant in tail by the death of such traitor or traitors, before the five and twentieth day of March, one thousand six hundred and fifty two, which by fine and recovery might be doctued by any of the said traitor or traitors, are and shall be to all intents and purposes forfeited for their said treasons; and as well the said traitors and their heirs and assigns, and all other persons and their heirs in reversion or remainder upon any such estate, shall be for ever barred, as if such traitor or traitors had actually levied a fine, and suffered a recovery for doing thereof, any allowance, law, statute or usage to the contrary in any wise notwithstanding."

Wednesday August 4, 1652. The House again resuming the debate of the ingrossed Act for sale; A proviso was tendered by Mr. Strickland (on the behalf of sir William Craven) who was privy to the agreement of the said

marriage of sir William Craven, viz. "Provided that this act, nor any thing therein contained, shall extend to make void any remainder, use or reversion settled upon sir William Craven knight, out of the estate of William lord Craven, or John lord Craven his brother, whose estate is since descended to William lord Craven, at or before this marriage with Elizabeth, daughter of Ferdinando lord Fairfax, deceased; any thing in this act contained to the contrary thereof, in any wise notwithstanding." But this Proviso after the reading thereof, and some debate thereupon, was rejected; and the bill for sale of the lord Craven's estate immediately thereupon passed, as a law.

The lord Craven shortly after having notice that the Bill was past for sale of his estate; and that the surveyors were sent down into the country to survey the same, in order to a present sale; and being desirous to preserve the same (though confiscated, yet) from being can-tonized into several hands; was desirous again humbly to petition the parliament, and thereupon retired out of Holland to Brussels in Flanders, and from thence did write a Letter to Mr. Speaker, all of his own handwriting, and therein inclosed a Petition, subscribed also with his own hand, submitting to such sum of money as the parliament should please to impose upon him, and also sent duplicates of that petition to his friends, to be presented to the parliament, in case the Speaker's Letter and Petition to the parliament should mis-carry, and withal did signify to his friends his readiness to come over in person, and (though innocent of the charge against him) yet was resolved to submit unto, and satisfy such sum of money as the parliament should impose upon him; hoping they would rather choose that way, than utterly to ruin him in his estate and fortunes, by permitting his houses to be pulled down, his woods to be felled, and his lands to be sold to strangers; hoping also, that it would be considered he was a person innocent, as to blood, plunder, or violence in the late unnatural wars in England, Scotland, or Ireland, having gone beyond seas by leave of parliament, and resided there ever since, until now, being near twelve years together, attending his charge there, under the prince of Orange. Which Letter and Petition from the lord Craven, delivered by Mr. Speaker to the clerk to be read, were as followeth:

To the honourable William Lenthall, esq.  
Speaker of the Parliament of the Commonwealth of England.

"Sir; Although I am altogether a stranger to your honour, yet as my misfortune is at present, I do not know how to avoid giving you the trouble of addressing this inclosed supplication to you, for the parliament of the Commonwealth of England; the which I shall humbly beseech you, out of your accustomed civility to all persons that have recourse to you in this kind, to present it with that advantage, that it may be permitted to be read, and taken into consideration of that honourable house,

having been far other in my comportment, than what by misfortune I have been calumniated to have been; so that I hope their grace and favour will be afforded according to this my reasonable request; the which no person shall acknowledge with more respect towards them, nor your favour herein with greater value of your generosity and goodness, than what he shall do, that desires to have cause to be, Your most affectionate and obliged servant,

Sept. 3, 1652.

WILLIAM CRAVEN."

To the Supreme Authority of this Nation, the Parliament of the Commonwealth of England: The humble Petition of William Lord Craven,

"Sheweth; That whereas it hath been your petitioner's sore affliction to fall into the displeasure of this honourable parliament, and to remain under your most heavy sentence, yet considering that the severity thereof was such, (reaching both life and estate) as might justly deter him from adventuring in person into England, and considering that it hath not been the manner of this honourable house of parliament, to execute their judgments to the ruin of families, where there hath been any hopes of rendering them serviceable to the Commonwealth.—In these respects he is encouraged in most humble manner to intreat your wouted clemency, in the remission of your heavy sentence against his life and person, and that paying a reasonable sum of money, he may be restored to his estate, whereby both he, and those who have just title in law to it after his death, (being preserved from ruin) will be obliged to be your honours in all respective demeanor and observances. And your petitioner shall pray, &c.

WILLIAM CRAVEN."

But the House was divided whether to permit the Petition to be read; yet afterwards resolved to read the same; whereupon the Petition was read; and his excellency the Lord General much pressed the house, that notwithstanding their Resolution to sell the lord Craven's estate, yet that they would rather impose a sum of money upon the lord Craven, for that he judged it to be more honourable, then to expose his estate to sale, and intimated a considerable sum indeed; besides the 30,000*l.* which had been already received out of his rents and personal estate, and by the damage done to his woods.

Sir William Craven, and sir Edmund Sawyer did attend at the door at that time, expecting to be called in, to give assurance to the parliament, that the sum of money which they should think fit to impose upon the lord Craven, should be speedily raised.

As the House was in debate of this business, the Danish ambassador was admitted to have audience to take his leave, which being done, and the ambassador gone, it was moved to resume the debate again; but the contrary was pressed by others; and the Speaker was required to propound the question, whether the

house should any further resume the debate of that business; the house was thereupon divided; and it was carried in the negative by four voices, there being 34 against taking any further consideration of his Petition, and 30 for resuming the debate thereof; the Votes which passed that day, were as followeth.

"Friday Oct. 29, 1652. A Petition of the lord Craven being presented, Resolved by the Parliament, that his Petition be now read; and the Petition was now read accordingly, and was intitled, The humble Petition of William lord Craven. The question being put, That the house do proceed farther in the debate upon the Petition of the lord Craven; it passed in the negative."

After this Vote there was no further application made to the parliament on the behalf of the lord Craven; for that surveyors were gone to the several counties to survey his estate; and some surveys were actually returned, and days appointed for sale. And the Members of the House stepped in with the first to buy the flower of his Estate, to the value of 5*st* 6,000*l.* per annum, as appears by the contracts made at Drury-House in their own names, and in the names of others intrusted for the use of members.

That stately house of the lord Craven's at Causam near Reading, in excellent repair, was bought by some persons, who for greedily lucre and gain, utterly defaced the same, pulled down the wainscot, stair-cases, lead, iron, and all the materials about the house, which cost building 20,000*l.* they giving the Commonwealth little above 1,500*l.* in moneys (the price of debentures therein also included.)

It being now term time when the House was the last time divided about the lord Craven, and there being no hopes to have his case further heard, it was thought necessary and convenient however to expedite the Trial upon the indictment of perjury against Faulconer; whereupon course was taken to remove the indictment by a Certiorari into the Upper Bench, to the end the said Faulconer might be outlawed for perjury; the record being accordingly removed, a Capias in order to an out-lawry was taken out against the said Faulconer, who for several sessions before had refused to appear: at last the said Faulconer was taken upon the said Capias, and carried to Newgate, where he lay for some time, and would not appear nor plead to the Indictment; Whereupon the prosecutors for the Commonwealth were enforced to move the court for a Habeas Corpus, to bring him to the bar, that he might be enjoined to plead, and accordingly the court required him to plead; whereupon he pleaded Not Guilty to the Indictment.

Hilary Term, 1653.

In Hilary term following a day was appointed for Trial upon the Indictment, at Guild-Hall London, before the lord chief justice Rolls, where the said captain Bishop, and Faulconer appeared with their counsel and

witnesses; and Mr. Rushworth also appeared in behalf of the Commonwealth with counsellors and witnesses, and had given in the record to have the jury called, but it so fell out, that a person of integrity then in court, who had gotten certain knowledge when and where the said oath was taken, gave Mr. Rushworth notice, that the oath given to Faulconer, was administered unto him at White-Hall in Middlesex, and not at Haberdashers-Hall in London, and therefore the place being mislaid in the indictment, a London jury could not find a fact done in Middlesex: Whereupon Mr. Rushworth immediately withdrew the record for that time, and gave a stop to the Trial.

No time was mis-spent to recover this mistake: for within two days a new Indictment was drawn, and preferred to the grand jury in Middlesex, (Sir Henry Blunt being foreman) where the indictment was found: and was as followeth:

Hilary Term, 1653.

“*Middlesex.* Before this time, that is to say, upon Tuesday next after the morrow of the Purification of the Virgin Mary, this same term, before the Keepers of the Liberty of England by authority of parliament, in the Upper-Bench at Westminster, by the oaths of twelve honest and lawful men, it is presented, That Richard Faulconer late of Westbury in the county of Southampton gent. not having the fear of God before his eyes, but moved and seduced by the instigation of the Devil, and minding and endeavouring to bring the right honourable William lord Craven, baron of Hampstead, marshal in the county of Berks, in danger of the loss of his life, and of the sequestration, confiscation, and forfeiture of all his goods, and chattels, lands and tenements within this Commonwealth of England,\* the 10th day of February, in the year of our Lord God 1650, at White-Hall, in the parish of Martin's in the Fields, in the county of Middlesex, before Samuel Moyer, esq. James Russel, esq. Edward Winslow, esq. Josias Barners, esq. and Arthur Squibb, esq. then being commissioners for compounding with delinquents, and for managing of all and every the estates of delinquents and Popish recusants; that the 15th day of April, in the said year of our Lord God 1650, were, or then after should be under sequestration, did upon the Holy Evangelists, corruptly, wilfully, falsely and maliciously, of his own proper act, consent and agreement, swear, and upon his corporal oath before the commissioners aforesaid, on the said 10th day of February, in the said year 1650, then having sufficient and lawful power to administer the said oath, and to take the testimony and depositions of witnesses upon their oaths in such cases, then and there deposed; That several officers, about 30 in number, made a Petition to the Scots king Charles, to entertain them to fight for him against the Commonwealth of England, by the name of ‘Barbarous and Inhuman Rebels,’ either in England or Scotland, for the

recovering of his just rights, and reinstating him in his throne. And did also then and there corruptly, wilfully, falsely, and maliciously, before the said commissioners, swear, that the said officers deputed him, the said Richard Faulconer, and colonel Drury, to present the said Petition, who (as the said Richard Faulconer, then and there, corruptly, wilfully, falsely, and maliciously, before the said commissioners did swear, indeed drew the same; and did also, then and there, corruptly, wilfully, falsely and maliciously, before the said commissioners, swear, that he the said Richard Faulconer, with colonel Drury, applied themselves to the lord Craven, (meaning the aforesaid William lord Craven) entreating him to present the said Petition to the queen of Bohemia, to present it to the king of Scots: and did also then and there, corruptly, wilfully, falsely and maliciously before the said commissioners, swear, that the said lord Craven, taking the said Petition, and reading the same cheerfully, said unto colonel Drury, and him the said Richard Faulconer, There is the queen of Bohemia, deliver it to her, and I will speak for you: and that the said queen of Bohemia did present the said Petition; and did also then and there, corruptly, wilfully, falsely and maliciously, before the said commissioners, swear, that the said lord Craven after told him the said Richard Faulconer, and company, that they should receive an answer from the queen of Bohemia to their Petition, and that he (meaning the said William lord Craven) had spoken to the queen of Bohemia in their behalf: whereas in truth, neither did several officers, or any officer make a Petition to the said king to entertain him or them to fight for him against the Commonwealth of England. Nor did several officers or any officer make a Petition

the said king to entertain him or them to fight for him against the Commonwealth of England, by the name of ‘Barbarous and Inhuman Rebels,’ either in England or Scotland. Nor did several officers or any officer make a Petition to the said king to entertain him or them to fight for him against the Commonwealth of England, by the name of ‘Barbarous and Inhuman Rebels,’ either in England or Scotland, for the recovering of his just rights, or reinstating him in his throne. And whereas in truth, the said Richard Faulconer, and colonel Drury were not deputed by the said officers to present the said Petition, in the said oath mentioned; and whereas in truth, he the said Richard Faulconer, with colonel Drury, did not apply themselves to the said lord Craven, entreating him to present the said Petition to the queen of Bohemia, to present it to the said king of Scots. Nor did he the said Richard Faulconer, with the said colonel Drury, treat him the said lord Craven, to present he said Petition to the said queen of Bohemia, or present it to the said king of Scots. And whereas in truth, the said lord Craven did not take the said Petition, nor read the same; nor say unto the said colonel Drury, and him

the said Richard Faulconer, There is the queen of Bohemia, deliver it to her, and I will speak for you : and whereas in truth the said Lord Craven did not tell him the said Richard Faulconer, and company, in the said deposition mentioned, that they should receive an answer from the said queen of Bohemia, to the said Petition, nor that he the said lord Craven had spoken to the queen of Bohemia in their behalf, as the said Richard Faulconer, in and by the said deposition, hath deposed. And so the Jurors aforesaid, upon their oaths aforesaid, do say, that the said Richard Faulconer, in manner and form aforesaid, corruptly, wilfully, falsely and maliciously, of his own proper act, consent and agreement, did commit wilful, false, and corrupt perjury ; to the great dishonour of Almighty God, and to the great damage, loss and infamy of the said William lord Craven, and in contempt of the laws of this Commonwealth ; to the evil example of all others in the like case offending, and against the public peace, &c."

The reason wherefore this Indictment did not recite the oath *in hæc verbe*, as in the former indictment, but assigned the perjury in the material parts of the oath ; was by reason it came lately to knowledge, that the original oath could not be found, and therefore the oath was to be proved by the entries in the book of parliament, and at Haberdashers-hall, and by the testimony of the persons who administered the oath.

The next day after the Indictment was found, the prosecutors for the lord Craven moved the court for a Habeas Corpus, to bring Faulconer to the bar to plead to the indictment, who being brought into court, desired time to plead till the next term. Whereupon the Court made this Order.

"That the said Faulconer, having now in Court appeared unto the Indictment, should have time to plead unto the same, until the beginning of the next term, so that the issue thereupon may be tried at the bar in open court the same term."

Easter Term, 1653.

Faulconer having all this vacation neglected to appear, or plead to the indictment, the prosecutors for the lord Craven were enforced again to move for another Habeas Corpus, to bring Faulconer to the bar, to appear, or plead to the indictment ; who appearing, desired longer time to attend his counsel, which the court granted accordingly, and the ordinary rules of court were given unto him for the peremptory days of pleading, or judgment to be entered against him ; and the very last day, when the last rule was out, and not before, he pleaded Not Guilty. And the court ordered, that the issue upon the indictment of perjury against the defendant, be tried at the bar upon Friday in the morrow of the Ascension of our Lord ; and that the sheriff of Middlesex do attend Andrew Broughton, esq. with the book of freeholders, forthwith, so that an indifferent

Jury may be returned between the said Keepers, and the said Defendant, to try the issue aforesaid, by consent of the parties on both sides.

Mr. Broughton accordingly appointed the sheriff to attend him the next day in the afternoon, with the book of freeholders, who accordingly named the Jury, and notice was given by the sheriff, requiring them to appear at the day of trial.

THE TRIAL OF RICHARD FAULCONER,  
*Friday, May 20, 1653.*

The Jury appearing according to summons, and Faulconer being brought in custody, the Court proceeded to Trial, and ordered the Indictment to be read ; which being afterwards opened by Mr. Boynton, the Evidence was managed by Mr. Maynard, Mr. Hales, Mr. Twisden, Mr. Wilde, Mr. Phillips, Mr. Baldwin, and Mr. Drury, who were of counsel for the Commonwealth against the said Faulconer.

Before the counsel for the Commonwealth proceeded to produce any witnesses, they offered unto the court and the jury something in general concerning the indictment. That the indictment was for the crime of perjury, wilfully and corruptly committed that Faulconer makes an oath that there was a Petition delivered, in which there was a very sharp reflection (as he swears) upon the parliament, by the name of Barbarous and Inhuman Rebels ; he swears he was deputed to deliver it, being drawn by himself and Drury, and subscribed by 30 officers ; that in order to the delivery thereof, they did require the assistance of the lord Craven, that he promised to speak for them, and brought them an answer ; but they hoped to prove unto the Jury, that this oath which Faulconer did take, was very false, that it was by design, a design for money, that the consequence of it was very notorious, the ruin of that gentleman, of his estate, fame and fortune ; that witnesses will be produced to prove, what in truth the Petition was ; there was a Petition delivered, but not a Petition to this effect at all, and Faulconer knew the contrary ; we shall produce what it was, and that under his own hand, whereby it will appear that there was no such matter in it, as he hath deposed ; the witnesses themselves will best speak the particulars.

For the opening of some things concerning this Oath of Faulconer, it is to be observed, he took this Oath before the commissioners of Haberdashers-hall at White-hall, and was there reduced into writing, and a transcript was made of the original : which transcript was sent to the Council of State, and they ordered the same to be reported to the Parliament, and being reported there, is entered in the Journal Book, and there remains a record in parliament.

The first thing therefore insisted upon by the counsel for the Commonwealth ; was the proving of a true copy of Faulconer's Deposition, in respect the original was lost, or rather embezzled by Faulconer, to prove the same.



A copy thereof was produced in court, which agreed *verbatim* with that Deposition of his, which was filed upon record at Haberdashers-hall; (the proper Court where it ought to remain) and though that upon the file was but a copy, yet it was filed as evidence of that Deposition he was sworn unto by them; but this was opposed by the counsel for Faulconer, as not sufficient proof; and thereupon a copy of an Order of the Council of State of March 6, 1650, was produced unto the Court, whereby it did appear, that the depositions against the lord Craven had been transmitted to the Council of State, by the commissioners at Haberdashers-hall, and it appeared further by the said order, that Mr. Attorney General, was appointed by the Council of State, to report these Depositions to the parliament, so transmitted to that council by the commissioners at Haberdashers-hall; and the Attorney General being sworn in court, did declare that he reported no other Depositions to the parliament, than what he received from the Council of State; and that the Depositions produced to him in court, (whereof the said Faulconer's was one) was indorsed with the hand-writing of the lord Bradshaw, then lord president of the Council of State; and that the Votes of Confiscation of the lord Craven's estate did pass upon the report of the said Depositions, which he presented to the parliament from the Council of State.

Mr. Fermin, chief clerk to Mr. Scobel, clerk of the parliament, did depose in Court, that the very same Depositions shewed in Court to Mr. Attorney General, endorsed with the lord Bradshaw's hand-writing, were entered in the Journal Book, as read in parliament that day when Mr. Attorney General did make his report unto the parliament, which he knew the better to be true, for that he received the same from the hands of Mr. Scobel, or Mr. Darnel, the clerk assistant in parliament, the same day they were read in parliament, to be entered in the Journal Book; and that he did enter the same accordingly with the Votes of Confiscation, which passed upon the reading of those Depositions, and afterwards he and Mr. Darnel did examine the said Depositions, whereof the said Faulconer's was one, after the same were so entered into the Journal Book.

And for the further satisfaction of the court, he produced the Journal of parliament, wherein the said Depositions (and particularly that of Faulconer's) were entered, which were read in court, out of the Journal, whereby it did appear that the Depositions of the said Faulconer, Kitchingman and Reyly, were entered into the said Journal, and did agree *verbatim* with the copy of Faulconer's and their Depositions remaining at Haberdashers-hall, and with the copy reported by Mr. Attorney General from the Council of State to the parliament.

Mr. Winslow, one of the commissioners at Haberdashers-hall, being one before whom the said Faulconer was sworn, did testify upon oath in court, that the Deposition of Faulconer pro-

duced unto him, and whereupon there was an endorsement of the lord Bradshaw's hand-writing; was, as he did believe, a true copy of that Deposition to which the said Faulconer was sworn at White-hall, for that he findeth his own hand subscribed thereunto; (as examined by him to be a true copy) and said it was usual with the commissioners at Haberdashers-hall, when they take examinations concerning any person of quality, to appoint one of themselves to go from the table to examine the copy by the original: but whether when he subscribed his name unto the copy produced unto him, he did examine the same by the original Deposition before it was sent for away by the Council of State, or afterwards, or by the transcript remaining upon the file as a record at Haberdashers-hall, he could not positively remember; But conceives that the copy to which his hand is subscribed, as examined by him, to be a true copy, was taken when they had the original in custody; but cannot certainly say it.

Mr. Barners, another of the Commissioners at Haberdashers-hall, before whom also the said Oath was taken, did testify upon oath, that to the best of his remembrance, the particulars mentioned in Faulconer's Deposition, then read in court, were the same to which the said Faulconer was sworn unto by himself and the rest of the Commissioners, though he could not remember every syllable and letter.

Mr. Winslow, and Mr. Barners were again produced to declare what they did remember concerning this clause in the Deposition of the said Faulconer, viz. 'That several officers, about 30 in number, made a Petition to the king of Scots, to entertain them to fight for him against the Commonwealth of England, by the name of Barbarous and Inhuman Rebels, either in England or Scotland,' &c. and thereupon Mr. Winslow did declare unto the Court, that he did well remember that clause in Faulconer's Deposition when he was sworn thereunto, but whether the number of officers were thirty or no, he could not tell, but a certain number of officers were named.

Mr. Barners did declare the like, but whether the word 'Inhuman' was in, he could not positively say; but was certain that 'Barbarous Rebels' was contained in that clause; and that when Faulconer was sworn unto the same, it was first read unto him, and amended in several places, and then he swore it to be true; and Mr. Barners said, that he did remember his Deposition the better, for that himself and the rest of the Commissioners had several debates upon it at Haberdashers-hall, whether they should thereupon seize, sequester or secure the lord Craven's estate.

Having thus traced this Oath of Faulconer's, which was taken at Whitehall, and brought to Haberdashers-hall, afterwards brought from Haberdashers-hall back again to Whitehall, and from Whitehall to the Parliament, and there entered in the Journal Book, as the grounds upon which the Votes of Confiscation did pass, and having withal proved that parti-

cular clause of 'Barbarous and Inhuman Rebels, &c.' the counsel for the Commonwealth concluded as to that point, and left it to the Jury to judge, and to Faulconer to produce the original, which he hath got into his custody, if he can find any variance in it from the Deposition recited in the indictment.

And to prove that Faulconer had got the original Oath into his custody; Mr. Knight a witness was produced, who did testify upon oath, that being in the company of Faulconer, he did shew him a writing written with captain Bishop's own hand, (so far as he could judge one man's hand to be like another) and that Faulconer's name was subscribed thereunto, and that Faulconer told him the said Knight, that that writing was the original Deposition he was sworn unto, against the lord Craven, and which he kept on purpose to keep Mr. Bishop in awe (Faulconer being then in necessity and want) and that the said Faulconer further said unto him the said Knight, that he had received 20*l.* for the business of the lord Craven's, and was to have more, but said he deserved 2,000*l.* for what he had done.

In the next place the counsel for the Commonwealth did apply themselves to prove the falsity of the Oath, viz. That there was no such thing in the Petition mentioned by Faulconer in his Deposition [As that thirty officers did Petition to be entertained to fight for the king of Scots against the Commonwealth of England, by the name of 'Barbarous and Inhuman Rebels, &c.'] and being to prove a negative, they applied their proof to a certain time and place, which Faulconer in his own Deposition did prove for them, for he swears that the Petition was delivered the evening before the king of Scots went from Breda, and that the said king went away the next morning at three o'clock; he swears further, that he and Drury drew the Petition, and were deputed to deliver the same, accordingly they applied their evidence.

*Proof, as to the falsity of Faulconer's Oath.*

Master Horsnell being produced, did testify; That the night before the king of Scots went from Breda, colonel Drury, captain Brisco, and divers others, were with a little short Petition to remember the king of a former Petition which they had delivered, that some course might be taken that their arrears which they owed in the town might be paid, that their landlords where they lodged might not suffer, for they were not able themselves to pay them; that he went along with them to the great window just over the moat, and there he the said Horsnell did set his hand unto the same, and that he was in the Chamber when Drury and Brisco came in to deliver the Petition, in which there was not a word that concerned any thing, but only the relief of their present necessities; Being asked by the court, if there were not a mention of 'Barbarous and Inhuman Rebels,' he answered, not any thing of that nature was in it; he further said, that this Petition had re-

ference to a former Petition he was not acquainted withal, nor was his hand set to the former Petition.

Capt. Brisco being produced, did testify, that there were divers gentlemen in great distress met together in col. Drury's chamber at the time of the Treaty of the Scots king with the Commissioners at Breda, and among other things it was agreed to draw a Petition to the king, which was drawn in col. Drury's chamber, expressing their necessities, that the people of the town might be relieved, and that the Petitioners might not be left to perish: that going to deliver it, they met with secretary Long by the way, who told them that it was to no purpose, for that there was no money come in: afterwards the petitioners had notice the king was to depart from Breda, whereupon they met together again, and went into the further end of the gallery to draw a short Petition, to put the king in mind of his promise to secretary Long, concerning the people of the town of Breda, that they might be satisfied, and the petitioners rejoiced, which paper he the said Brisco delivered to the Scots king, who threw it on a table; and doing so, they stood all amazed, being likely to be left in distress, and unexpectedly came in the lord Craven, whereupon he the said Brisco, having long served in the country, and knowing him to be a lover of soldiers, he spoke unto him, and said, Sir, we are a company of poor distressed gentlemen, likely to be left here in misery, he said, Well, and the next morning the king went away, without giving any relief unto the petitioners. The court demanded of Brisco whether there were no such matter in it as 'Barbarous and Inhuman Rebels;' he answered, that he read it, and was sure there was no such thing in it, the whole scope of it being to relieve their necessities, which was the occasion of that Petition; being demanded again by the court, if 'Barbarous and Inhuman Rebels' were not in the Petition; he answered, No, not any such words at all, nor so much as any mention of the parliament.

Col. Drury was in the next place produced, who testified, that, being at Breda, licut. col. Bardsey, major Faulconer, major Hall, capt. Kitchingman, and divers others, came to his lodging, and told him they were in a condition of starving, and desired him that he would assist them to draw a Petition to the king of Scots, to relieve their necessities, or else they must perish; that the said Drury being in their condition, consented unto it, and in his chamber, in his son's paper book the Petition was drawn, major Faulconer writ it with his own hand, which saith Drury, I have here to shew, and so presented the original under Faulconer's hand unto the court, in which Petition, said Drury, we desired some relief from his majesty, shewing how we had served the former king, and in what necessities we were in; that they were advised to deliver it to secretary Long, for that they were told that the king had not a pistol to relieve himself, and it would be a vain

thing, said Long, to deliver it; that they followed secretary Long, and solicited him daily for three weeks together, and still he put them off; and the day before the king went from Breda, they drew a short Petition to mind the king of his promise to secretary Long, and to desire that the inhabitants of Breda that had relieved them, might not be undone, that Brisco was deputed with him to deliver it, and he accordingly delivered it to the king, that the king laid it down upon the table; in steps the lord Craven, then capt. Brisco, having trailed pike under the lord Craven, went to him, and told him there were many gentlemen ready to starve, and desired him to speak a favourable word to the queen of Bohemia; to which the lord Craven answered, Well, as Brisco then told him: the next morning the king of Scots went away, and so nothing at all was done for the petitioners. That original Petition which Drury produced unto the court, of Faulconer's own hand writing, and in the presence of Faulconer, was publicly read in court, and was as followeth, viz.

"May it please your majesty; the great sense we have always had of your majesty's present condition, hath been the prime cause of our long silence; but now our necessities are grown so great and insupportable, that we are enforced either to petition or perish. Most humbly desiring your majesty, to take into your princely consideration, their extremities who have been ever ready to prostrate their lives in your majesty's royal father his service: Nor no less willing and ready to prosecute the same in what your majesty shall command: Most humbly petitioning your royal order, that some course may be taken for our present sustenance, that our future endeavours may not be buried in that unavoidable calamity, which our loyalty hath reduced us unto. And we shall cordially pray for your majesty."

The Court demanding of col. Drury, if the said Petition was Faulconer's own hand writing, he said yea, and looking back upon Faulconer, said, He cannot deny it: I did dictate it unto him, and Faulconer did write it in my chamber; and that is the very original that was so drawn, and being fair written, was afterwards delivered to secretary Long; the other that was delivered, was a memorial, to put the king in mind of his promise when money came in; and Drury further said, that when he was examined by Mr. Bishop, he did give in his examination, the contents of the first and latter Petition, and said, he did express himself at that time of his examination by Mr. Bishop, to the same effect which he had now done in court. Being asked by the Court, if the words 'Barbarous and Inhuman Rebels' were in that first Petition, the said Drury answered, that Faulconer moved to have 'Barbarous and 'Inhuman Rebels' inserted into that Petition so drawn by himself, but was answered by the Petitioners, that they were soldiers of fortune, it was uncivil language, and so they would not

VOL. V.

give way unto it; being demanded by the Court who was deputed to deliver the last Petition, he said capt. Brisco was one, in regard he had many wounds at Canon-Froom, that the king might commiserate his case the more, and that he the said Drury was also deputed with Brisco to deliver the same, because he was known to the queen of Bohemia, and some other persons of quality, and Faulconer was not at all deputed. Being asked if the lord Craven was present at the delivery of the first Petition: He answered No, the Petition was delivered three weeks before; but the lord Craven was present when the last Petition was delivered, to mind the king of his promise; the said Drury further informed the Court, that afterwards Faulconer being discontented that he got no monies, said, as he was going into the town, This is a horrid thing, that we should be in this case, to follow a thing they call a king, (God damn me) I will go into England, and do all the mischief I can.

#### *Proofs as to the Credit of Faulconer.*

In the next place the counsel for the commonwealth did apply themselves to offer Proof as to the credit of Faulconer.

Mr. Woolbridge of Clements Inn, attorney at the common law, being sworn, did testify to this purpose; That being in his chamber at Clements Inn, about this time 12 months Faulconer came to him, asked how some of his countrymen near Petersfield did? That he asked Faulconer where he had been of so long a time? Who answered, he had been in the Low-countries, had seen some lords sit in counsel for the king, that he had been sworn against the lord Craven, which would bring a great deal of advantage to the state, that he had monies for the doing of it, and said that he had received already 80 l. (it was that sum here mentioned, said Mr. Woolbridge, to the best of his remembrance) but Faulconer said, he did expect a greater reward; that the said Faulconer hath been as wicked a man as any in England; that he spent his estate and left the country, did wicked acts while he was there; that being at Petersfield, he drunk a health to the Devil in the middle of the street, of which information being given, we went to the justice of the peace in the town, and had him bound over to the sessions for doing of it, but said, he did not see him drink the health to the Devil.

Mr. Jackson of Petersfield being produced, testified, about five years ago Faulconer was ranting and drinking of healths, that he did drink a health to the Devil, and said this, I have spent my brother's estate, and my own, I will never want money, for whilst there is any in the nation, I will get it one way or other, and I will do something of infamy to be talked of, that the name of Faulconer shall never die: Being asked in what manner he did drink the health, he answered, in the street, down upon his knees, that he was present, and then—

? A

sands can witness it, that he was had before a justice of peace for it.

*James Graham* being sworn, did testify, that in May 1647, after the Siege of Exeter, it was his fortune to fall into the company of *Faulconer*, and as he was with him in the cellar, he was swearing, 'Damn him, blood and wounds,' takes a two and twenty shilling piece of gold, puts it into his hand, and said, 'God damn him, blood and wounds, he would bugger his soul to hell,' and these words he used frequently to man, woman and child, 'bugger, bugger, bugger,' and correct him for it, he would say, 'Damn him, blood and wounds, he would do it.' Being asked by the Court, if *Faulconer* did any thing upon him, he answered, 'No; he was able to deal with as good a man as he.'

*Mr. Hughes* hath often heard *Faulconer* swear, 'Damn him and sink him,' and such wicked expressions.

*Mr. Brauley* did testify, that he heard *Faulconer* say our Saviour Christ was a bastard, and a carpenter's son, and carried a basket of tools after his father.

*Mr. Dyer* being produced, did declare that *Faulconer* confessed to him, that he had 10*l.* of a man, by procuring one to personate captain Bishop; it was thus, (as *Faulconer* told him) That a citizen, as he remembered *Faulconer* said, did desire *Faulconer* to get captain Bishop to do a business for him, which citizen did promise him 20*l.* ten in hand, and ten afterwards; whereupon *Faulconer* said he got one to personate captain Bishop, and to go along with him to the citizen; which man so personating captain Bishop, promised the citizen upon the account of major *Faulconer*'s good services for the public, to afford him his best assistance in the effecting of what was desired in his Petition, which story *Faulconer* himself told; and *Faulconer* further said, that captain Bishop had used him ill, in keeping him so low in money, that he had it one time in his thoughts, as captain Bishop came from the committee-chamber, through the guard-chamber, down the stairs, to have cut his throat; Being asked by the Court what monies *Faulconer* had of captain Bishop, he answered, he paid to *Faulconer* with his own hands, by captain Bishop's directions, 20*l.* at one time, and about 30*l.* more at other times, in several portions, that *Faulconer* confessed to him he had 20*l.* afterwards. Being demanded what it was for he gave that money, he said, 'I will not speak to that, I cannot speak to that.'

*Capt. Ballard* being produced, did testify, that about three or four years ago, he came to *Faulconer*'s lodging, and saw him write a letter in his chamber, and that he writ it as if it had come from colonel Burgess from Jersey, and set Burgess his name to it, and *Faulconer* would have had him the said Ballard to carry this letter to one captain Bishop that belonged to the Council of State, and to say he had the letter from one of Bristol, and get some money of Bishop for that intelligence mentioned in the letter, of which the said Ballard was to

have half, but he the said Ballard refused to go with the same, knowing it to be unjust.

*Mr. Powell*, a justice of the peace of the county of Middlesex, did testify to the court, that this *Faulconer* was brought before him upon suspicion of felony, and committed, which mittimus he produced in court; that afterwards the Lord Chief Justice Rolls did send for him out of New Prison to Newgate; that *Faulconer* hath a common name for a robber upon the highway.

*Mr. Goodman*, gaoler of Aylesbury, did testify unto the court, that the said *Faulconer*, the 20th of March 1648, was committed to Aylesbury gaol by sir Thomas Sanders, Mr. Bulstrode and two other justices of the peace, upon suspicion of felony, robbery and murders, and tendered a Certificate thereof in writing unto the court.

#### *The Defence made on the behalf of Faulconer.*

1. The Evidence being given on the behalf of the Commonwealth, *Mr. Windham*, *Mr. Latch*, *Mr. Lechmore*, and *Mr. Dagat*, of counsel for *Faulconer*, did offer something to the consideration of the court before they did produce their witnesses, viz. That although it concerns every man that perjury should be punished; for every man's life, liberty, fortune and estate depends upon an oath, and in these times it is somewhat dangerous, if they should be forsworn; So on the other side if *Faulconer* be not forsworn, it is but just he should be acquitted: That the counsel for the Commonwealth have endeavoured to prove that there was a Petition, but that there was no such words in the Petition as are suggested, and have endeavoured to impeach the credit of *Faulconer*: That they have produced a copy of *Faulconer*'s oath, which ought not to be admitted, because it is but a transcript of a transcript, a copy of a copy, brought from Haberdashers-hall to the Council of State, and from the Council of State to the Parliament, and there the copy is entered in the Journal book: And the witnesses that have been produced, do not swear positively to the oath as it is in writing, and one particle may turn the whole sense of an oath: And though these words 'Barbarous and Inhuman Rebels' were in it, yet how it is applied, and how the sense of it falls, it cannot be judged, but by the original writing itself, and it concerns the Counsel for the Keepers to produce it: How it should come into *Faulconer*'s hands, there is no account given, but by one Knight, who saith *Faulconer* shewed him a thing, which *Faulconer* said was his 'original' Deposition against the lord Craven, but the credit of Knight's testimony is left to the Jury: It is sworn that that copy produced in court was examined, but *Mr. Winslow* doth not positively say it was examined by the original, when in their custody.

That as to the Witnesses produced against the credit of *Faulconer*, they did hope to counterpoise his life to be, as of a man that might be credited; that in the Petition deliver-

ed at Breda, there is something of those words, though there be not 'Barbarous and Inhuman 'Rebels,' which was but a nominal thing; yet the prostrating of themselves to prosecute the cause, is desired may be observed, though the actual words be not there, yet the sense doth bear it; that the case is somewhat hard with Faulconer, who was employed at the court at Breda as an emissary, as a spy: And at his return in giving an account of his observations at Breda, let something fall concerning the Lord Craven, without any design in him, and that what Faulconer delivered in his Deposition was with qualifications, 'as he did believe to his best remembrance, and the like.'

Hereupon captain Bishop was produced on the behalf of Faulconer, as a witness, whose discourse was long, and consisted of three parts.

1. It took notice how the Council of State sent for him from his habitation at Bristol, to be employed in matters of great trust, and afterwards what trust was reposed in him and Mrs. Scot, in order to the safety of the nation.

2. By way of argument on behalf of Faulconer, he did declare what services Faulconer had done for the Commonwealth, and that Faulconer was one by whom this Commonwealth sat safe at this hour and by whom he enjoyed his life: and what all ill requital this was to be thus proceeded against.

The third part of his discourse, was, to declare what particular designs the state formerly had in hand, and what designs the enemy had against the state: and what service he did to countermine the enemy in their designs; the last of the three being not (as was conceived) so advisedly spoken in public, and which would be more unfit to be in print: Shall therefore here be past over in silence, as also what captain Bishop said at large concerning the two first particulars. In respect they are no proofs pertinently to be applied, as to the perjury in question.

A brief account only shall be therefore given what captain Bishop properly spoke as a witness.

As a witness, captain Bishop said, he had never seen Faulconer in drink or misbehave himself, but ever observed him as a sober man, that he did draw Faulconer's information 'which Faulconer did deliver as the substance,' and that he must say, that the words 'or to that effect' should have been put in, and that it was his fault they were not in, and he could not tell but that they were in; that the commissioners at Haberdashers-hall were desired to come to White-hall to administer an oath to the said Faulconer privately, lest danger should befall the witnesses if they were discovered.

That Horsnel was formerly an agent for the prince, and was to receive orders from Tom Cook in the Tower, and was ordered to be tried by the High Court of Justice: That colonel Drury was a papist in arms, and being brought before him to be examined, still had the lord Craven in his mouth, before he was asked a question.

The like of Brisco. He said, that before Drury and Brisco came from beyond seas, his agent gave him notice of their coming, and thereupon he laid wait for them, and caught them; that Drury said, when he was examined, that he had not a penny of money, that he did not commit him to prison, but took his parole, and in commiseration gave him 2s. 6d. for his supper: he said further, that Drury did contradict himself in what he had formerly informed the Council of State, and to that end produced in court the copy of Drury's Information, which being read in court, agreed with the testimony which Drury then gave to the Jury.

[By way of Digression observe, That Drury's and Briscoe's Informations which captain Bishop had taken, above 12 months since, and which tended to clear the Lord Craven, he concealed till this hour that he produced the same in Court, and never transmitted those two men's Examinations to the Parliament; Though before the Bill of Sale did pass, he did transmit Bardsey's and Kitchingman's re-examination taken by himself, and which he apprehended made against the Lord Craven.]

Captain Bishop further said, That whereas it was objected that Faulconer had money: he answered, that it is great reason he should have monies, for there was a real effect of the safety of the Commonwealth by his services; that notwithstanding any thing hath been sworn against Faulconer, he believes what he swore was truth.

Captain Bishop speaking again of Faulconer's Deposition, that the words 'or to that effect' should have been added: the Court asked him whether Faulconer gave any directions to express these words in his examination: to which captain Bishop made answer, that the Deposition he made, was the 'substance of things, and he put it in words, and that 'or to that effect' if they were not in, should have been in. The Court again asked him if Faulconer did direct him to put in these words or to that effect? He replied again, he did deliver the whole, 'as the effect of it.'

Captain Bishop being further asked by the court, if he were present when the commissioners gave the oath, and took what Faulconer said in way of information, he answered, 'That he prepared it before the commissioners were sent for,' and then they had only the administering the oath; and said again, 'I prepared the Information which he took the oath of,' hereupon Mr. Winslow desired leave to inform the court, that when he and the rest of the commissioners came to White-hall to administer this oath, being sent for to that end, the Information was ready prepared by captain Bishop, and having no register with them, they made use of captain Bishop, being well skilled in the use of his pen, to write over the Deposition, for though he had prepared the Deposition, the commissioners did see occasion to alter

much of it, and it was writ over again, and then read to Faulconer, and attested by him, and subscribed unto by the hands of all the commissioners then present; and the oath which we gave him was this, 'Whether the Deposition thus drawn, and that which he was examined unto, was the truth, the whole truth, and nothing but the truth;' Mr. Barners attested the like: then captain Bishop sat down.

After this lieut. col. Joyce was produced, who likewise spake of very great designs, and of matters of State, and what discoveries were made by Faulconer, which being not pertinent to the perjury, shall be here omitted; But as a witness he said, That Horsnel was formerly an agent for the prince. That Faulconer was a Hampshire-man, a gentleman well bred, that he was an enemy to himself in spending his estate, that he was always faithful to the parliament, that he believes Faulconer hath cuffed some of the witnesses produced against him for their malignancy, and that nothing could be expected to come from them to the credit of Faulconer: That Faulconer was sent over by him as a spy into Holland upon an account of faithfulness.

Lieut. col. Bardsey was produced in the next place on the behalf of Faulconer, who testified, that he put his hand to the Petition at Breda, that the lord Craven was desired to deliver it to the king of Scots, that the lord Craven said he was no courtier, but a servant to the states of Holland, that it was fitter for the princess royal to deliver it than himself, and so returned the Petition again: that the queen of Bohemia told the Petitioners the king would do for them what he was able; but about 4 o'clock in the morning he went away, and they had no other answer; that the contents of it was to put the king in mind of his promise, that some money might be delivered to the Petitioners for discharge of their quarters at Breda. Being asked by the court, if there were any expressions in it, as 'Barbarous and Inhuman Rebels,' he answered No: being asked, if to that Petition which Faulconer drew, he would have had 'Barbarous and Inhuman Rebels' added; he answered, Yea, Faulconer did move to have those words in, but was refused; that he the said Bardsey read over that Petition, and set his hand to it, and was at the penning of it, and Faulconer wrote it.

Captain Kitchingman being produced, did testify, that a Petition was drawn at Breda, and signed by him, Faulconer, and others, to be presented to the king of Scots; that it was in pursuance of gaining moneys to discharge their quarters, and to enable them to serve the king, but knows not by whom it was delivered; that secretary Long was to issue out monies unto them, but they never had any; and in order to the gaining of that money, there was another Petition drawn, but by whom delivered, he knew not: only he saw a paper in the queen of Bohemia's hand, which was told him was the Petition, and after a quarter of an hour's

discourse with the king, she delivered it to the king; but they never received any money upon that neither: That he did not read the last Petition at all, nor heard it read; that it was the first Petition which he signed.

Col. Dove was produced in court on the behalf of Faulconer, who said, he knew nothing of his birth, he only knew his father and mother, that they lived in good fashion and credit, but how this Faulconer hath been brought up, and where he hath inhabited for these 10 or 12 years, he knew not; and that this was as much as he could say.

Michel, an ale-house-keeper, was then produced, who said he knew nothing of Faulconer, but that he was a very honest man, Faulconer having lain in his house a year and three quarters; that he knows nothing to the contrary, but that he was a good scholar, an honest man, and brought up at the university.

Capt. Moxbrey being produced as a witness, did testify, that anno 1649, in Amsterdam, he met accidentally with captain Brisco, who said to him and others, Gentlemen, I see you are in a sad condition, I will set you a way to get money; here are Dutchmen taking up men to go to plantations, and you shall have 12 stivers a piece a day, but I will warrant you, I will force them to leave you behind, and accordingly they received 12 stivers a day, and Brisco would have had them on ship-board, but one Church an Englishman bid them take heed what they did, for he served some Englishmen so before, clap them under decks, and received so many 6 dollars a piece for them, and so left them; That he hath known Faulconer 5 years, and he hath behaved himself civilly for ought he ever saw.

Mr. Corey did testify something to this purpose, in reference to Brisco's sending men to plantations; who said further, he had no more to say against Brisco, but that he was a man would drink, and sometimes swear as well as other men that are accustomed to it, that he knows nothing to the contrary, but that he came to Breda to wait for employment; in the mean time whilst he was there, he did as other men did, strive to seek for relief.

After the Court had with much patience heard captain Bishop and the rest of the witnesses on the behalf of Faulconer, the counsel for Faulconer summed up the Evidence, and left it to the Jury, with some further observations, viz.

That though the words "Barbarous and Inhuman Rebels" were not in the Petition, yet there were words of "tender of Service," as the king should command, and to prosecute his cause, which was the substance of the thing informed by Faulconer; that captain Bishop, and lieut. col. Joyce, who have testified of Faulconer's services, were witnesses to be preferred before any witnesses produced against Faulconer; that the endeavour is not only to convict this man, but by conviction and disabling of his credit, to undermine that which

hath been acted by the parliament upon his testimony, and other concurrent testimonies, not only in passing votes, but in passing an act of parliament to sell an estate.

That there was nothing objected against the credit of this witness, so long as there was any other stone to turn, though there were other endeavours used in parliament to prevent the sale of the lord Craven's estate, so that when all other refuges failed, then they make use of this indictment of perjury, and so hope to undermine the act of parliament; though Faulconer might have some extravagance, yet you see what his part was to act, to dissemble that he was not what he was, and it may be when he was amongst the God-dammes, and such kind of men, it was his part to seem to be what most conduced to his end, [like themselves] for a man as he was employed must twine himself into all shapes, and though not drink a health, yet sometimes "hold a candle to the Devil;" that they acknowledge the charge in part, and would lay it in words, not in substance, and therefore not strictly in the letter true.

That it was proved that the first Petition was to serve the king, as they formerly had served his father, and they served his father against the parliament: so their offer must needs be, to be entertained to serve the king against the parliament.

That it is a sad case that this man for so many services performed by him for the Commonwealth, and settlements grounded upon his information, must be blasted here by an artificial Indictment a great while after.

And if he shall after all this be convicted of perjury, it will be a discouragement for all men to undertake the like employment for the future.

And lastly, The counsel for Faulconer did offer: that if there be a mistake in what he hath sworn, yet it appears not to be maliciously or corruptly done, and that therefore the Jury ought to find for Faulconer.

**THE REPLY** by the Counsel on the behalf of the Commonwealth against Faulconer, was to this purpose following:

Gentlemen of the Jury, you have heard the Defence that Faulconer hath made; we have charged him, that he did take the oath that was set down in the indictment: they say, first, we have not proved it; secondly, that he did not take it, but did take it in effect; and thirdly, If he did, it was not maliciously, nor corruptly; but not one of them hath said it is not false, no not one of their own counsel; the evidence that hath been given for the most part, hath been to magnify the service of this man that is now in question before you: We shall admit his services to be true, but this we shall be bold to say, that a man that is employed beyond sea, and gives good return of his service in some kind, That that will not give him license to make a false accusation in another kind: and it is no argument to say, that because this man was a spy beyond the sea,

and did good service as a spy, that therefore he did not give a false information; In this he must not take a liberty to ruin any man by a false oath: his service must not excuse him, if what he hath said be false.

And for what Mr. Bishop said concerning his oath; for Mr. Bishop tells you, it is his fault if the words "or to that effect" were not put down; if it were not, whose fault was it. It was mended by those whose judgments and consciences induced them to it: The information he took was done by the judgment of the committee, and not by the direction of him that was a minister, a scribe to write, and not a judge to dictate and correct: you have here two men of unquestionable truth and honesty every way (meaning Mr. Winslow, and Mr. Barners) that say positively he did swear it, and God forbid that we shall live to that day, that any man should be ruined upon a Deposition taken, by the judgment of a clerk, 'to such or such effect.' If we should come to such a piece of justice, that a Deposition 'to such and such effect,' and that taken by a clerk, should come to cast a man, it is beyond an oath of '&c.' For it is the judges that must say what is the effect of an oath, and not the clerk that writes it: If a clerk shall take an oath, and he shall come and say, 'it is to this effect,' never shall any man be free from him that by perjury will ruin another man: It is proved unto you, it was read over to Faulconer, expressly mended in his sight, and sworn by him, and let the 'effect' go with the '&c.' that went before it.

They objected to our witnesses, that Brisco had sold his companions for twelve stivers a day; that information had no other foundation than the saying of a Dutchman, that said so, or of an Englishman in a Dutch bottom; And what was testified, was what was said, and not what was known or sworn; they objected that Brisco would swear as well as another; that takes not off his testimony; but what do they say concerning their own witness Bardsey, whom they have produced. He hath sworn *in terminis*, in effect with Drury, which you will not forget: He swore, that when the first petition was drawing, it was moved by Faulconer that the words 'Barbarous and Inhuman Rebels' should be put in, but this was rejected by them that were there, as a thing uncivil; so their own witness concurs with Drury.

As for the Deposition on record at Haberdashers Hall, which being filed there, it is proof of itself, which no man may aver against, when it is recorded; we have shewed it there, traced it here, brought a copy of it indorsed with the lord Bradshaw's hand; shall it be believed that a man shall be confiscated and lose his estate, and not so much as an oath taken against him. It is apparent there was an oath, and it is hoped you will believe that which the parliament hath recorded, and expressly proved by the gentlemen of Haberdashers Hall here present, which you will believe before any imaginations can be made on the other side.

They have endeavoured to say something touching the conversation of this man, to uphold his credit; but, Gentlemen of the Jury, you are to consider of the man, what damnable blasphemy hath come out of his mouth, you have heard it: If a man will go so high, as to kneel down to "drink a health to the Devil," I hope there is no excuse for that; his good services must not plead for him to comply with God-damnees, that will not justify him, he was not sent to do any such thing: but we have no rested there; have we not proved him a personator of other men, a decoy, and things that a man should be ashamed to assume: the two and twenty shillings piece he took out, and what base and vile words he spake, not fit to be repeated. That will not be palliated by any service whatsoever. And for that which Mr. Bishop hath said, nothing shall be said against him, but what appears to you: that Mr. Bishop hath gone beyond a witness: for when he hath done his testimony, acteth and manageth the business, and in that is not equal to others that do not: For his expression, that Faulconer is one of them by which the Commonwealth of England sits safe at this hour: It is God we sit safe by, and not by him: I blame him not for his service, but when we are upon a question of truth, I say truth and righteousness is beyond all the service in the world.

They say my lord Craven furthered the Petition, and promised to second it. Gentlemen, you must distinguish that which my lord Craven knew, and that which he knew not: there is not one witness from beginning to ending that ever can speak one word that my lord Craven knew what the first Petition was. In that Petition was the expression of venturing their lives, which was three weeks before the latter, which was singly to desire they might have money for their quarters. The first Petition had some expressions relating to their former service, and some expressions of their readiness for the future, but that Petition my lord Craven never saw, but was delivered to one Long three weeks before, and Drury did put it down in his Deposition when he was examined by Mr. Bishop, which agrees with that which was read in court.

But the particular time when the latter Petition or Memorial was delivered, with which the lord Craven is charged, was the evening before the king went from Breda.

They say that here is no corruption proved, and a man cannot be guilty without corruption: but certainly he that swears a thing that is false, it must of necessity be corrupt.

Faulconer swears that 30 officers did subscribe the Petition: Doth he bring any one to confirm his testimony, or the least colour of evidence to what he hath sworn?

It was further pressed by the counsel for the Commonwealth, that the Jury would distinguish these two things, between the Petition framed and dictated by Drury, and writ by Faulconer; and that other Petition delivered the night before the king went from Breda; the first is

produced, and proved to be Faulconer's own hand: that Petition was three weeks before, which begs for maintenance, and proffers service, the copy of which was brought forth before any evidence was given by them, for Drury upon his examination before the Council of State made the same known, and which agrees verbatim with that read in court; so the dictating of that Petition was by Drury, the writing by Faulconer, the delivery was, to secretary Long, and that was the thing whereof they did expect an account; but that was not the Petition to which the testimony of Faulconer at all goes: that Petition of which this oath is spoken, and to which it is applied, is the Petition which was drawn the evening before the Scots king went from Breda, that is the Petition talked of in the Deposition, that is the Petition upon which we pitch, and therefore if in that Petition there be none of these words, that which he hath sworn unto is false: for in that Petition we say there was no such words, as 'Barbarous and Inhuman Rebels,' nor such words of proffer of service or malignity, but a mere desire of supply; and they have not offered the least proof to the contrary. And secondly, that it was not promoted by the lord Craven, for the Petition was delivered by them to the Scots king, before such time as the lord Craven came into the room, so that my lord Craven was no promoter of the Petition; and had he been a promoter of it, there was no such thing in it as might give offence; no not the least mention of the Parliament, or any thing that might offend; and whereas they object that this oath was not corrupt, the very words of his expression are very considerable, for he doth remarkably fix the words in his Deposition, 'To fight against the Commonwealth of England,' by the name of 'Barbarous and Inhuman Rebels:' why would he fix such an emphasis upon it as that was? it could not be a bare mistake; nor the words 'to this effect,' as Mr. Bishop would have had in, could never have served the turn, for to say that he would fight against 'the Barbarous and Inhuman Rebels,' or to that effect, there is no such effect in the one Petition nor in the other. Then a second thing is, that this Faulconer being, as he deposeth, the contriver of the Petition, it could not be a mere oversight and mistake in him; and then when he could not have his desire beyond seas, to get monies, he said, 'He would come here and do what mischief he could.'

The counsel urged further: Gentlemen of the Jury, what is become of the original Depositions it concerns not us to know, no more than the original of Depositions taken in the country; it lies upon them that are for the Oath to make it out. It cannot be presumed that the Parliament would confiscate a nobleman's estate, and order it to be sold: would they enter it into the Journal Book, and make it a record; should it come and be transmitted from Haberdashers-hall (the proper judicatory for that business) to the Council of State, and



from the Council of State to the Parliament, and then not to be a true oath, or false copy? that is not to be borne, that a false copy should sell a gentleman's estate, and that a false copy should be recorded to stand to all eternity.

After the Reply was made, every Judge in Court spoke what they in their judgment thought fit, for the better direction of the Jury; whereupon the Jury withdrew, and the next day brought in their Verdict, that they found the said Faulconer Guilty of the Perjury mentioned

in the Indictment. The Order following was thereupon made, viz.

By the Court.

"The Defendant was this day brought into court, under the custody of the marshal of this court, upon an Indictment for Perjury, whereunto he had formerly pleaded Not Guilty; and the Jury thereupon being impanelled, and sworn, found him Guilty of the Perjury in the Indictment mentioned. And thereupon the said Faulconer is committed to the custody of the said marshal; there to remain, until," &c.

## 192. The Case of Captain JOHN STREATER, on an Habeas Corpus,\* at the Upper Bench in Westminster-hall, Mich. & Hil. Terms: 5 CHARLES II. A. D. 1653.

The Habeas Corpus was read:

"BY the Keepers of the Liberty of England by authority of parliament. To the Keeper of the Prison of the Gate-house in the Liberty of Westminster, in the county of Middlesex, of

to his deputy, these, greeting. We command you that the body of John Streater, in the prison under your custody detained, as it is said, together with the day and cause of his taking and detaining, by whatsoever name the said John is called therein, you have before us

\* A passage in Ludlow's *Memoirs* (vol. 2. p. 114. Edinburgh edition, 1751), which, on other accounts, is curious and interesting, has transmitted to us the Narrative of a Conference between that sturdy republican and the master whom he had unwittingly made for himself, in which the practice of arbitrary imprisonment and the right to the Habeas Corpus were very boldly spoken of:

"The usurper having governed, as he thought, long enough by virtue of the Instrument of Government, which, though drawn up by himself and his creatures, was now thought to lay too great a restraint upon his ambitious spirit; and resolving to rest satisfied with nothing less than the succession of his family to the crown, he attempted to make himself king. To this end he thought it necessary to call a parliament; and that he might engage the army to assist him in all parts to procure such men to be chosen as would be fit for his purpose, he pretended that this assembly was called only in order to raise money for the payment of the army and fleet, to confirm the authority of the Major Generals, and that of the Instrument of Government. By this means he obtained his desires in a great measure; especially in Scotland and Ireland, where all kinds of artifice, and in many places the most irregular courses, were taken to get such men returned as were proposed by the court. But knowing the people of England not to be of so mercenary a spirit; and that as they were better instructed in the principles of civil liberty, so they were not wanting in courage to assert it, he used his utmost endeavours to disable and incapacitate such men from being chosen whom he thought most likely to obstruct his designs. In order to this, he summoned the Lord President Bradshaw, sir Henry Vane, col. Rich, and myself,

to appear before him in council; which we all did, except sir Henry Vane, who told the messenger he should be at his house at Charing-cross on a certain day. Cromwell, as soon as he saw the Lord President, required him to take out a new commission for his office of Chief Justice of Chester; which he refused, alledging that he held that place by a grant from the parliament of England to continue *quâmdiu se bene gesserit*. And whether he had carried himself with that integrity which his commission exacted from him, he was ready to submit to a trial by twelve Englishmen, to be chosen even by Cromwell himself. Col. Rich being pressed to give security not to act against the government, and refusing so to do, was sent prisoner to Windsor castle. Then I drew near to the council table; where Cromwell charged me with dispersing treasonable books in Ireland, and with endeavouring to render the officers of the army disaffected, by discoursing to them concerning new models of government. I acknowledged, that I had caused some papers to be dispersed in Ireland; but denied that they justly could be called treasonable. And though I knew not that it was a crime to denigrate of the several forms of government, yet that I had not done any thing of that nature lately, to the best of my remembrance. He then said, That he was not ignorant of the many plots that were on foot to disturb the present power, and that he thought it his duty to secure such as he suspected. To this I replied, that there were two duties required by God of the magistrate, i. e. that he be a terror to those that do evil, and a praise to such as do well; and whether my actions were good or bad, I was ready to submit to a legal trial: that I was ignorant of any other way to secure the magistrate from being afraid of the people, or the

in the Upper-Bench at Westminster, Wednesday next, after the morrow of St. Martin; to undergo and receive those things which our said Court of Upper Bench shall then and there order concerning him in this part. And this you must not omit at your peril. And have you then this writ. Witness Henry Rolle at Westminster, the 12th of Novemb. in the year of our Lord 1653.

(By the Court.) *Ex. BROUGHTON."*

people from the dread of the magistrate, unless both will do that which is just and good. 'You do well,' said he, 'to reflect on our fears; yet I would have you know, that what I do, proceeds not from any motive of fear, but from a timely prudence to foresee and prevent danger: that, had I done as I should, I ought to have secured you immediately upon your coming into England, or at least when you desired to be freed from the engagement you had given after your arrival: and therefore I now require you to give assurance not to act against the government.' I desired to be excused in that particular, reminding him of the reasons I had formerly given him for my refusal; adding, that I was in his power, and that he might use me as he thought fit. 'Pray then,' said he, 'what is it that you would have? May not every man be as good as he will? What can you desire more than you have?' 'It were easy,' said I, 'to tell what we would have.' 'What is that, I pray?' said he. 'That which we sought for,' said I, 'that the nation might be governed by its own consent.' 'I am,' said he, 'as much for a government by consent as any man: but where shall we find that consent? Amongst the Prelatical, Presbyterian, Independent, Anabaptist, or Levelling parties?' I answered, 'Amongst those of all sorts who had acted with fidelity and affection to the public.' Then he fell into the commendation of his own government, boasting of the protection and quiet which the people enjoyed under it, saying that he was resolved to keep the nation from being imbrued in blood. I said, that I was of opinion too much blood had been already shed, unless there were a better account of it. 'You do well,' said he, 'to charge us with the guilt of blood; but we think there is a good return for what hath been shed; and we understand what clandestine correspondences are carrying on at this time between the Spaniards and those of your party, who make use of your name, and affirm that you will own them and assist them.' 'I know not,' said I, 'what you mean by my party; and can truly say, that if any men have entered into an engagement with Spain, they have had no advice from me so to do; and that if they will use my name, I cannot help it.' Then, in a softer way, he told me, that he desired not to put any more hardships on me than on himself; that he had been always ready to do me all the good offices that lay in his power; and that he aimed at nothing by this proceeding, but the public quiet and security. 'Truly, Sir,' said I,

*Capt. Streater.* My lord, I desire that this Writ with the Return may be filed.

*Judge.* (Lord Chief Justice Roll.) What say you, Mr. Prileaux?

*Prileaux* (Attorney General). Nothing.

*Judge.* Let it be filed. Have you any counsel?

*Streater.* Yes, my lord.

*Judge.* What do you say to it?

*Streater.* I desire to have a copy of the Return, and that I may be bailed.

'I know not why you should be an enemy to me, who have been faithful to you in all your difficulties.' 'I understand not,' said he, 'what you mean by my difficulties. I am sure they were not so properly mine as those of the public; for, in respect to my outward condition, I have not much improved it; as these gentlemen,' pointing to his council, 'well know.' To which they seemed to assent, by rising from their chairs: and therefore I thought not fit to insist farther on that point; contenting myself to say, that it was from that duty which I owed to the public, whereof he expressed such a peculiar regard, that I durst not give the security he desired; because I conceived it to be against the liberty of the people, and contrary to the known law of England. For proof of this I produced an Act of Parliament for restraining the council-table from imprisoning any of the free-born people of England; and, in case they should do so, requiring the justices of the Upper Bench upon the application of the aggrieved party, to grant him Habeas Corpus, and to give him considerable damages. To this act I supposed he gave his free vote; assuring him, that, for my own part, I durst not do any thing that should tend to the violation of it. 'But,' said he, 'did not the Army and Council of State commit persons to prison?' I answered, 'That the Council of State did so, but it was by virtue of an authority granted to them by the parliament; and if the army had sometimes acted in that manner, it had been in time of war, and then only in order to bring the persons secured to a legal trial; whereas it is now pretended that we live in a time of peace, and are to be governed by the known laws of the land.' 'A Justice of Peace,' said he, 'may commit, and shall not I?' 'He is,' said I, 'a legal officer, and authorized by the law to do so; which you could not be, though you were king; because, if you do wrong therein, no remedy can be had against you. Therefore, if I have offended against the law, I desire to be referred to a Justice of the Peace, that I may be proceeded with according to law; but if I have done nothing to deserve a restraint, that then I may have my liberty.' Whereupon being commanded to withdraw into a room next to the council chamber, I heard major general Lambert to advise, that I might be peremptorily required to give the security demanded. But Cromwell said, that the air of Ireland was good, that I had a house there; and therefore he thought it best to send me thither. Immediately after, Mr. Scobel, one

*Judge.* It cannot be : you are committed by the Parliament, and you must shew cause first.

*Streater.* I am ready : I desire to speak to it now, both I and my counsel.

*Twisden.* I was a Counsel for the first part of the Return, but not for this.

*Judge.* What say you ?

*Freeman.* I desire he may have a copy of the Return.

of the clerks of the council, came to me, and acquainted me, that I might return to my lodging. Where I had not been a quarter of an hour, before Mr. Strickland, one of the council, came to me, and pressed me earnestly to comply. But I told him, that having contended for the liberty of others, I was not willing to give away my own, and to be made a precedent to the prejudice of my countrymen, because it was the pleasure of those that had the sword to have it so. 'Why,' said he, 'was it not the sword by which you kept Waiour-castle, and by which you acted during the whole course of the late war?' 'I had,' said I, 'the authority of the parliament to justify me in so doing.' He answered, 'But they governed by the sword.' To which I replied, 'That indeed they made use of the sword to remove the obstructions that were in the way of the civil government, and exercised that power to vindicate and establish the law of the land; and that I was heartily sorry to see one who had been so forward in the cause of the public, not to discern any difference between a sword in the hands of a parliament to restore the people to their ancient rights, and a sword in the hands of a tyrant to rob and despoil them thereof. Here our discourse was interrupted by a messenger, who came from the council with an order from them, to require me to give the security of 5,000*l.* within three days after the date of the order, not to do any thing prejudicial to the present government; and, in case of failure, to be taken into custody. Upon the receipt of it, I told the messenger, that having no power to resist, I must submit to their pleasure. A day or two after the expiration of the time limited by the order for giving the demanded security, which I had not done, Serjeant Dendy came to me, with an order from the council, signed by Henry Lawrence, President, requiring and authorising him to take me into custody. Having shewn me the order, he desired me to make choice of a chamber; but, after some discourse with my near relations, who were then present, 'e was contented to let me remain at my lodgings. So having promised to return in a day or two, and in the mean time to advise with lieutenant general Fleetwood, he went away. The next day Cromwell, diverting himself with hunting at Hampton-court, asked my brother Thomas Ludlow, who was in the company, if he were not angry with him for committing me? and my brother answering, That it was not fit for him to judge concerning his actions; he thereupon assured him, that he wished me as well as any of his own children; that his

*Judge.* Do so, and let him be here again on Friday next : let it be so.

*Streater.* I desire, my lord, I may not be put to the trouble to sue for a new Habeas Corpus. [And then Mr. Streater not being permitted to speak any more, he was taken away by the marshal of the court of the Upper Bench, and carried to the Prison of the Upper Bench in Southwark.]

desiring me to give security for my own carriage to the government, was designed by him as well for my good as for his own security, and that he would have him to engage for me: to which he most readily consented. The morning following, my brother came to me; and having acquainted me with what had passed between Cromwell and himself, I gave him thanks for his kind offer; but withal told him, that I would by no means desire that of him which I was not willing to do myself. Beside, I told him, that should it be granted that the thing were fit for him to do, yet it might prove a snare to him, and lay an obligation upon him to gratify the usurper in another way. However, after this discourse of Cromwell to my brother, and the conference of my relations with Serjeant Dendy, I ventured to accompany my father and mother Oldsworth, with my wife, into Essex."

The following appears in the second volume of Ludlow's State Papers, p. 680.:

#### 'Engagement of John Streater.

'I, John Streater, do promise, that I will make good my promise to general John Disbrowe, which was, that I will not say or speak any thing to the disturbance of the Commonwealth, and the present government thereof; and that I will, upon notice given me, appear before the council, or any person the Lord Protector or his council shall appoint, there to answer any thing of misdemeanor that shall be charged against me. JOHN STREATER.

'October 13, 1651.'

'In witness whereof, we hereunto set our hands the day and year abovesaid.

'JOHN DISBROWE,

'CHARLES WORSLEY.'

Hume, speaking of the crisis which preceded Cromwell's violent ejection of the Parliament in April 1653, relates the following anecdote: "By mutual altercation and opposition the breach became still wider between the Army and the Commonwealth. Cromwell, finding matters ripe for his purpose, called a Council of Officers, in order to come to a determination with regard to the public settlement. As he had here many friends, so had he also some opponents. Harrison having assured the Council, that the general sought only to pave the way for the government of Jesus and his saints, major Streater briskly replied, That Jesus ought to come quickly; for if he delayed it till after Christmas, he would come too late; he would find his place occupied."

Colonel Barksted then appeared upon lieut. col. Lilburne's Habeas Corpus, and gave this following Reason for his not bringing the body of lieut. col. Lilburne.

"According to my orders, my lord, and the Return of the Habeas Corpus, I brought the body of lieut. col. John Lilburne on Monday to the court; at which time I was ordered to attend the court again with him here as this day. But this morning I received an order from the Council of State to the contrary: and here it is, my lord."

*Clerk.*

"Wednesday Nov. 23.

"Whereas the body of Mr. John Lilburne, by an Order of Parliament, was committed to the Tower for the peace of the nation; and whereas there was an Order to the bringing of him forth thence to the Upper Bench this day: It is ordered by the Council of State, that they do not bring him, but that he there abide the pleasure of the house."

*Lilburne's Couns.* My lord, on Monday it was agreed that they should bring him again on Wednesday; and I have no instruction from my client, for I have no access to him, nor he to me.

*Judge.* Well, pray advise with your client.

*Lilburne's Couns.* My lord, I desire to have an Alias Habeas Corpus.

*Barksted.* I have only learned, my lord, to obey orders, and I shall obey them.

*Judge.* You do well. The Council of State have a reason for what they do in this business.

*Lilburne's Couns.* My lord, when must we attend at court?

*Judge.* On Saturday.

The Return of the Habeas Corpus for captain Streater being filed, the cause of Imprisonment shewn in the return was grounded upon two Warrants: first from the Council of State.

"These are to will and require you to take the body of Streater, and him you shall safely keep prisoner in your prison of the Gatehouse; he being committed for publishing of seditious Pamphlets against the State: of which you are not to fail. And for so doing this shall be your sufficient warrant. Given at the Council of State sitting at White-hall, the 12th day of September, 1653.

S. MOYER.

To the Keeper of  
the Gate-House.

R. TRENCH, Presid.

R. LAWRENCE.

JOHN HEWSON.'

The second Warrant was signed by the Speaker, by order of the parliament.

"By virtue of an Order of Parliament, bearing date this present 21st day of November, these are to will and require you to receive and take into your custody the body of John Streater, and him to keep and retain in safe custody, until he shall be delivered by order of Parliament. Whereof you are not to fail, as you will answer the contrary at your peril.

'Given under my hand this 21st of November, 1653. FRANCIS ROUS, Speaker.'

To the Keeper of the Gatehouse,  
Westminster.

Upon the reading thereof in court, this Rule following was ordered to be entered.

'Wednesday next after eight days of St. Martin, 1653. The Gate-house, Westminster.'

'The Defendant was this day brought into this Court, by virtue of a Writ of Habeas Corpus, to undergo, &c. under the custody of the keeper of the prison of the Gate-house. And it is ordered by the Court, that the Habeas Corpus and the Return thereof be filed, and that the said Streater have copies of the said Writ and Return, and that the said Streater be committed to the custody of the marshal of this Court, and that he have the body of the said Streater in Court upon Friday next, upon the motion of Mr. Freeman.—By the Court.'

The second Appearance of captain Streater, on Friday the 23d of November 1653, by virtue of an Habeas Corpus, and the Rule aforesaid of the Court of Upper Bench of the 21st present.

Captain Streater being at the bar, the clerk read the Return, which was only the Keeper's Answer to the Habeas Corpus, which requir-eth him to shew cause why the prisoner is detained in prison. He in the Return citeth the Warrant, Order, or Mittimus for commitment, and certifieth that is the cause contained in them, and none other.

The Return being read, the judge asked captain Streater what he had to say to the Return, and who was his counsel.

*Streater.* Mr. Norbury, Mr. Freeman, and Mr. Twisden, are counsel with me.

*Judge.* What say you?

*Twisden.* I was a counsel for the first part, but not for the second, for publishing scandalous Pamphlets. If there be no more in it, he may be bailed.

*Judge.* No, there is no more in it. What say you, Mr. Freeman?

*Freeman.* My lord, as to the second part of the Return, it is in these words: 'These are to will and require you to take into your custody the body of John Streater, and him safely keep, till he shall be delivered by order of Parliament.' My lord, every Return ought to have these two things in it; the Cause and how long he shall be a prisoner: and so you have it in Magna Charta, p. 54. My lord, all acts of parliament against the laws of the land, are in themselves void. The law is above the parliament.

*Judge.* Good Sir, do not stand to repeat these things before us.

*Free.* My lord, I do know it; they may pass their acts according to law, but not against law. The lord Dyer hath it so in his Reports.

*Judge.* When we are in examination of a

prisoner, will you come and overthrow the acts of parliament?

*Freeman.* My lord, I refer it to your lordship's judgment, whether this gentleman ought to be kept in prison without cause shewn.

*Judge.* What say you, Mr. Norbury?

*Norbury.* My lord, we must look to see if the Return be true: if it be not, we have an action of the case against them that made it false. And though we will not say that is false, yet here is no offence recited at all. And my lord, all the acts are the acts of this present parliament; and we look on them to be, or ought to be, for the liberty of the people.

*Judge.* What have you to say to the second part of the Return?

As to the first part of the Return, Mr. Pridaux said he should say nothing unto it, therefore the Judges advise captain Streater to speak to the second part of the Return.

[Now for that the Argument that captain Streater had prepared to shew the insufficiency of the first part of the Return, may be of great use, and fit for public view, it is thought fit to be inserted here; and after it, his Argument upon the second part of the Return, the which he delivered with an audible voice at the bar, with the Attorney-General's Plea thereto, and the Judge's Judgment thereupon.]

*Captain Streater's ARGUMENT to the first Part of the Return.*

My lord, I being brought to this bar by virtue of a Habeas Corpus, which requireth (by virtue of the law, which is the supreme authority of England, and only authority of parliament, and all courts of judicature) the cause ought to be shewn why I am detained a prisoner upon the Return. The first part mentioneth a cause, though not a lawful cause: the second part sheweth no cause.

My lord, the intent in law of an Habeas Corpus, is to relieve prisoners, notwithstanding special commands for imprisonment, as appeareth by the act of parliament the 17th of the late king, intitled, 'An Act for the abolishing the Star-Chamber, and regulating the Council Table;' which ordaineth, that notwithstanding special commands for imprisonment, the party so imprisoned shall by a Habeas Corpus be brought before the Judges of one Bench or other. And if the cause of his commitment be legal, he shall be remanded to the prison from whence he came; if no cause (that is to say, no lawful cause) appear, then the prisoner is to be set at liberty; if it be doubtful, then the prisoner is to be bailed.

My lord, with these agree the learned Arguments of sir Edward Coke, sir Edward Littleton, and Mr. Selden; together with the Resolves of the Commons in parliament (1628) thereupon. And the second part of Institutes, fol. 52. 'The warrant or mittimus ought to contain a lawful cause.' The writ of Habeas Corpus is the Water of Life, to revive from the death of imprisonment.

Sir Edward Coke in his third general reason

why a Habeas Corpus is to remove the body, notwithstanding of special commands, saith, That 'Imprisonment is accounted in law a civil death, where a man is deprived of society, of wife, house, country, friends; and liveth with wicked and wretched men.' The writ of Habeas Corpus, and the benefit thereof by law (which is the undeniable right of every Englishman) is called 'The High Point, the only Point.' Nay the Commons of parliament of the 4th of the late king, in the Conference with the Lords, say that they had redeemed the body of liberty, by clearing this point: that is to say, That in case one be committed by virtue of special command, he shall have the benefit of the writ of Habeas Corpus to bring his body, with the cause, before the Judges of either Bench; where if it be found a lawful cause, he shall be remanded; if no cause, delivered; if it be doubtful, then to be bailed.

My lord, I shall make it evidently appear, when I come to make my Exceptions, that there is no lawful cause shewn in the Return to the Habeas Corpus why I should be a prisoner. With your lordship's favour, I shall speak one word or two of the law of England; I shall make use of it anon. It may not improperly be said, it is written by the Finger of God: it is not unlike (in that where indeed the perfection of it lieth) unto the laws of the Eternal Lawgiver; which is, it is as well binding to the lawgiver, as to those that are to give obedience unto it.

Anno 42 Edw. 3. chap. 3. 'No man shall be proceeded against, but according to the old law of the land: There shall be nothing done to the contrary, if it be, it shall be void.'

If this serve not my turn, I am sure there be enough that speak the language I would have them, that say, Be it so and so enacted, and not otherwise.

First, I observe here they command law.

Secondly, That they command, that none shall command otherwise but by law.

God himself bindeth himself by his laws: he is as well bound, as he bindeth those several beings he gives laws unto, let them be eternal, moral or natural. If he maketh a promise, he performeth it: he must not, he doth not but perform it. If he create a world, and willeth it to continue, he must support it in its beauty and strength, and by his providence support the several beings in it.

My lord, Law is supreme; none ought to command contrary to law. It is not, that he or they are superior that command, that therefore they should be obeyed; no, it ought to be diligently enquired by the inferiors, whether superiors command law, or not; if not, they are not to be obeyed. For that this is not a rule amongst men, is the reason so much of absoluteness and tyranny is so much on foot in the world.

Camerarius mentioned a story of Henry 2, of France, his committing to prison an Italian ackey, and shewing no cause of his commitment. The Judges visiting the prisoner, com-

manded that he should be delivered. The king again committed him, and commanded that he should be executed. The Judges notwithstanding the second time opened the prison-doors for him, for that the law warranted them for so doing.

Henry 3, of England, commanded Ralph Nevil (Lord Keeper or Lord Chancellor) to deliver the Great Seal. He refused it, because it was to be disposed of by the Common-Council, or parliament of the kingdom. This is attested by Matthew Paris, and Matthew of Westminster. Thomas late lord Strafford's plea, 'That what he did, was in obedience to his superior, the king his master,' could not protect him from contign punishment, for that he had transgressed the law. Plutarch saith, the Spartans were happy in their king Agesilaus, who had such a reverend esteem of law, that he gave obedience to a small scroll of parchment, which was the summons of his country for his appearance. That which will make us happy, must be our laws; not men, councils, or courts. Aristotle said, 'That it is better to govern by good laws than good men.'

My lord, our laws are good; they are (as to the intent) the only preserving laws in the world: they are the stroug-holds, the bulwarks to the weakest.

Edw. 6. fol. 36. The law is called, 'The inheritance of every subject.' It is the Inheritance of Inheritances; and without which inheritance, we have no inheritance: we should be but as tenants at will, to be turned out of life, liberty and estate, at pleasure.

My lord, withal, the law signifieth nothing at all, if there be not a way to obtain the benefit thereof; the which should be as certain and unalterable as the law itself. And therefore I think that the statute of 42 Edw. 3, chap. 3, is meant a proceeding by record, when it saith, 'That no man shall be proceeded against, taken or imprisoned, but according to the old law of the land.' The same opinion may pass of the 29th chapter of Magna Charta, which is but an exposition of the good old law of the land.

Mr. Selden, in his Argument at the Conference of the Lords and Commons, 1628, saith, 'The law is of no benefit, if that the way be not open to obtain the benefit of the law.\*'

In all which, Proceedings by Discretion are justly reprov'd; for they are of evil consequence, as witness Empson and Dudley† in Hen. 7's days, by whom 'the subjects were grieved,' my author saith.

My lord, just proceedings are as necessary as just judgments. It is justice that saveth and defendeth a nation, that maketh it happy, fruitful, and prosperous. The frontiers of a nation may be guarded with men at arms, but it will not be preserved thereby: it must be justice in the midst of it: 'If there be but a man that executeth justice and true judgment,' he

shall save the city. There may be good reasons given for it. Injustice discontents a people; and usually the foundations of changes are laid upon the discontent of the people.

My lord, I speak not this as reflecting on this Court, or out of fear of injustice at this time or place; no, but only as laying a sure foundation for my Exceptions. If the law be supreme, and not to be varied from in the least title, then it is a sufficient sanctuary. Unless this be granted, all my Exceptions will profit me nothing.

I ought not to be remanded, because it cannot but appear I have been proceeded against not according to the law of the land, which is my right; and if my right, every man's right; and if not my right, it is no man's right.

42 Edw. 3, chap. 3, 'None shall be proceeded against, but by Presentment, or things of record, according to the old law of the land.'

It is not the law of our kings, but the consent of our forefathers: These are our privileges, and the present power hath declared they will be tender of them. The writ is by authority of parliament. This privilege of an Habeas Corpus putteth the difference between the villain and the freeman.

My lord, I shall now make my Exceptions to the Return.

First, the Return is too general, and sheweth not lawful cause why I should be imprisoned. I doubt not but to make it appear; and if so, I ought to be set at liberty without bail.

The act of the 17th of the late king provideth, 'That if no cause be shewn,' (that is to be understood, a lawful cause) 'then the Prisoner shall be discharged.' A Prisoner is not discharged, if he be bailed, for that he is a Prisoner to his bail; and if bailed, then it is to be supposed a cause, though such upon which he may be bailed.

The cause of imprisonment shewn in the first part of the Return, is for 'a Seditious Pamphlet against the State.' It doth not name wherein it is seditious; it doth not name what Books or Pamphlets.

2 Part Instit. fol. 591, on the statute of 1 Edw. 2. Sir Edward Coke saith, That the 'Mittimus or Warrant must contain the Cause, though not so certainly as the Indictment ought; yet with so much convenient certainty, as that it may appear judiciously what the offence is;' as for stealing a horse, or the like. And this is according to Reason, which is the Mother of Law; which hath had good authority at this bar, and now hath, and I hope shall have.

As by variety of natures, and forms, and names, several beasts are distinguished; so variety of titles do distinguish books or pamphlets. And for that there is or hath been as many several sorts of books or pamphlets distinguishable by their title or name, and matter or subject, wherein they are seditious, as there are several sorts of beasts distinguishable either by their nature, name or form: therefore if it

\* See 2 Cobb. Parl. Hist. 264.

† See No. 26, vol. 1, p. 283.

be needful, if a man steal a horse, that the Warrant or Mittimus shall say, the imprisonment is for stealing a horse, and not for stealing of a cow, the same will hold good for a cow, ox, or any other creature or thing.

If so, it had been as needful for the Return to express what Pamphlets or Books, either by title or name, matter or subject; for that there are, or have been as many several sorts of seditious pamphlets (so accounted) within these few years, of several titles, as there are several sorts of beasts in the world. And therefore seeing the Return doth not shew for which of them I am imprisoned, it must be presumed, there is not cause for my imprisonment. Generals are nothing in law:

Again, my lord: Sir Edward Coke, 4 part Instit. fol. 99, chap. 1, 'High Court of Parliament,' there in these words, saith, "That by order of law, a man cannot be attainted of high treason, unless the offence be in law high treason. He ought not to be attainted by general words of high treason by authority of parliament, (as sometime hath been) but the high treason ought to be specially expressed." This is so plain, it need not be pressed further.

Likewise the Resolution of the Commons in parliament, the 4th of the late king, resolveth, "That notwithstanding special commands for imprisonment, if there be not lawful cause of imprisonment shewed upon the Return of a Habeas Corpus, that then the Prisoner shall be acquitted."

I have plainly made it appear, that there is no lawful cause; yet notwithstanding I shall back it with Reasons that shall carry sufficient authority with them, to prove my assertion, That there is not lawful cause, and to prove that my imprisonment hath not been according to the law of the land, as is provided in the act of the 17th of the late king, 42 Edw. 3, c. 3, 25 Edw. 3, c. 4, and Magna Charta, c. 29. All which command but the law, or are rather but expositions of the law. And seeing the Parliament hath left this Court open for any to be relieved, I pray to be relieved.

My lord, I ought to be proceeded against by due course of law. The Act of the 20th of September, 1640, provideth, if it be for treasonable and seditious Pamphlets, the party shall suffer such penalties as are by the law of the land provided. By which it appeareth, that they intended no otherwise a man should be proceeded against in this case, but by due course of law; which is to be by presentment before justice, or thing of Record; as 42 Edw. 3, c. 3, at which time it is usual the accusers and the accused are face to face, and there they the accusers do aver, that that is the man that hath so and so offended; else how shall it be known that this or that is the man meant by the accusers.

Besides, my lord; anno 10 Eliz. c. 6, it is provided, That two Witnesses be as well at the Indictment as the Arraignment.

Indictment is an accusation against a man; and it is upon accusation the Mittimus is

made for commitment. It is fit a man at his commitment do know his accusation and accuser; if he do not, he cannot make his Defence. It is not fit he should be deprived of any advantage of that kind. Festus (Acts 25, 27,) saith, 'It seemeth not reasonable that he should send Paul to Augustus Cæsar, without shewing cause of his imprisonment.' There was cause, but not a lawful cause; for he saith, 'He might have been acquitted, if he had not appealed to Cæsar.'

If it should be objected, That a Privy-Council may, for several secret reasons of state, if they please, commit men, and shew no cause, or at least now so particular as the law requireth; sir Edward Coke, 2 part Inst. fol. 199, sufficiently answereth that, and saith, That 'the law admitteth not of matters of pleasure.'

My lord, that good maxim, That 'the safety of the people is the supreme law,' hath been misinterpreted by some that would have it thus: That if any by their endeavours do threaten disturbance to a government, and that they conceive it safe to take away those disturbers lives, or their liberties, in order to prevent those mischiefs they apprehend they may be instrumental in: if they cannot do it by law, then they may repair to extraordinary courses.

Mr. Sadler, in his book, intituled "the Rights of the Kingdom, and Customs of our Ancestors," reporteth, That the old Saxons had a maxim, that 'high or extraordinary justice is injustice.' My lord, an Injustice doth a nation or state more mischief and hurt, than all its private and open enemies can do.

Now having proved that there is no lawful cause shewn in the Return why I am detained a prisoner, I shall present your lordship with my second Exception, which is, That there is not alledged the time nor place where the crime was committed, that is the pretended cause of my commitment. My lord, I shall not insist upon matter of fact to any other end, than to shew the insufficiency of the return. And that the law intendeth that cause, nay, lawful cause should be shewn of commitment, in the Warrant or Mittimus, upon the first committing, the cause of commitment, may the better prepare his defence; the which the law intendeth not to deprive a person of: the which he should be deprived of by such returns.

I shall shew your lordship wherein first it may be alledged that I did commit a crime at London such a time, when I was at York. Mirrour chap. 3. sect. 23. "One that is appealed of Maim, may plead that he was sick at that time." My lord, many times such circumstances are the standards to measure the truth or falsehood of an accusation.

I shall first offer something to prove, that the place where the cause of commitment was committed, ought to have been shewn in the return.

Page 621 Fitz-Herbert, *Natura Brevium*, of a

Writ of Mainprise, it is in the beginning of the writ thus; 'The king to the sheriff, &c. of the part of A. taken and detained in our goal at G. for certain larcenary of a horse at S.' Now, my lord, here is the place alledged.

Sir Edward Coke, 2 part Instit. fol. 37. saith, That 'Appeals ought to contain, 1. the Fact: 2. the Year: 3. the Day: 4. the Hour of the day: 5. the Place where the fact was done.' Here are many certainties, but the certainty of time and place are not to be omitted; they are two essentials. So that if time and place be not shewn, when and where the crime was done, that is alledged to be the cause of the imprisonment, it may be concluded that there is no cause if it was done at no time, nor no place.

Another Reason why the time when the crime was committed, that is the cause of commitment, ought to be shewn in the Return, is this: If it were granted that it was so, that I did publish seditious pamphlets or books; it may be done seven years since, for ought that appeareth in the return.

That the Time when the fact was done, ought to be shewn, appeareth evidently by the provision that is made in the act of the 20th of September 1649, intituled, 'An Act for preventing of scandalous and seditious Books and Pamphlets.' 'Provided always, and be it enacted, That no person or persons shall be molested and impeached for any of the offences mentioned in this act, unless he or they be thereof accused within six months after his or their offence so committed or done.' Then 13 Eliz. c. 1. it is provided, That none shall be sued, troubled or molested for any of the offences contained in that act, unless they were accused thereof within six months, if the party or parties were not out of the realm.' Now, for ought there appeareth in the Return, the pretended cause of imprisonment was committed seven years since: and it may be as legally presumed to be six or seven years since, as four months since. And if so, then I am clear by virtue of those Acts I mentioned: they concern seditious and treasonable books or pamphlets. In a doubtful cause, it is better to acquit the guilty, than to condemn the innocent.

My third Exception is, That the conclusion of the Return ought to be according to law, and have these words; 'To be delivered by due course of law.' By which is to be understood 'speedily,' at the next gaol-delivery. It is not by the Return said by what I shall be delivered, nor when, whether ever or never delivered; it seemeth to intend a perpetual imprisonment, the which is utterly against the law of the land.

2 part Instit. fol. 315. c. 9. on the Stat. Glouc. 'Expedition ought to be used, to prevent long imprisonment. Imprisonment should be but till the next coming of the justice. And' (saith he) 'it is the mercifulness of the law of England, that it willett that none be ruined by long imprisonment.'

And therefore the afore-mentioned Writ of Mainprise (cited in Fitz-Herbert's *Natura Brevium*) seemeth to take up a complaint, That the people are not only grieved with wrong imprisonment, but more especially with long imprisonment, in these words: 'And him by such Mainprise from the gaol aforesaid hast delayed to deliver, to the no small loss and grievance of him the said It., and manifest peril of his life.'

Coke's 9 Report in Fowler's Case, and in the end of the Writ, hath these words; 'That the subject be not detained so long in prison, as till the justice shall come in Eyre.' By all which appeareth, that the law releaveth against long or perpetual imprisonment, as also against imprisonment without lawful cause, notwithstanding that it be by special command.

My lord, my life nor liberty cannot be taken away, but by law; nor given unto me but by law. It is a good Maxim, 'if we keep the law, the law will keep us.' It would be sad if a man should be necessitated to plead his cause by the making of friends, when the law shall not be sufficient to plead in his defence, and when life and liberty shall be disposed of at pleasure.

It is provided against in 2 Edw. 3. c. 2. of Charters of Pardon; where it is ordained and enacted, 'That such Charters shall not be granted, but only where the king may do it by his oath;' that is to say, where a man slayeth another in his own defence, or by misfortune: This the law warranteth to be done.

Now having proved, that there is no lawful cause shewn in the Return why I should be a prisoner, together with the insufficiency of the Return: if so, it is my privilege by law to be discharged and acquitted. And the present power declared to be tender of our rights and privileges: We have no rights, privileges or properties, but what we are instated in by the law: if so, then it is my right not to be deprived of what the law doth allow me. Your lordship is a judge of the law.

#### *Captain John Streater's ARGUMENT to the second Part of the Return.*

My Lord; As to the Second Part of the Return, that mentioneth an Order of Parliament, I make this Exception, 'That it doth not mention any cause at all of my imprisonment.' And seeing it doth not shew cause, it is of less strength than the former part of the Return, wherein is cause shewn, though not a lawful cause. And therefore there may be no more, but only the bare reading of it to shew the insufficiency of that part of the Return.

But here, if it should be objected, That it is grounded upon an Order of Parliament, and that the parliament are not bound to shew a cause; Truly, I am of opinion that the parliament would not own any one that should so argue, it being so perfectly repugnant to their honour, it being condemned in parliament within our memory, as unjust, illegal, unreasonable, and perfectly contrary to law; and



law is the only sceptre of senates, parliaments, councils, empires, kings, princes, governors and magistrates.

The late parliament, in their Declaration upon declaring England a Free State, (March 17, 1649) say, 'That their only authority is by the law.' Again, they say that they are sensible of the 'excellency and the equality of the law of England.' Also, 'That they should uphold the true approved rules of the law of England; and that the good old laws and courts of justice, and the custom of England, are the badges of our freedom, rights and privileges.'

And this parliament hath declared, That they will be tender of our rights and privileges; the which we enjoy by our laws. 29 chap. Magna Charta; 'None shall be taken or imprisoned, but by a legal proceeding, according to the old law of the land.' The words, 'None shall be taken,' imply, that none shall take or imprison any contrary to law. And it cannot be denied, but the law intendeth the protection of innocent persons in freedom: And there being no cause shewn in the return, let the command come from whence it will, the law will warrant a discharge.

If it be by Order of Parliament, if the Order shew not cause of imprisonment, not a cause only, but a lawful cause.

Parliaments ever made laws, but the judges of the law judged by those laws. Who will question but that the warrant of a justice of Peace, shewing lawful cause of imprisonment, is of greater force in law, than an Order of Parliament shewing no cause of imprisonment?

But, my lord, the parliament is here; it is their authority that I apply unto; there is nothing can be done here but by their authority; that is to say, the law. And therefore the law, and several acts of parliament, as that of the 17th of the late king, and divers others say, That I shall be discharged. Shall an Order of Parliament over-rule laws, statutes, customs, usages and reason? No, my lord, doubtless the parliament's intention in ordering that I should not be delivered but by Order of Parliament, is, That I should be delivered by Order of Law, as I here expect now, and do not question in the least. Order of Law may be reckoned as the consociet of all the parliament's Orders. Surely none will alledge, that the parliament intendeth to stop the proceedings of law that may relieve me; or that this Order of Parliament is superior to authority of parliament that is judicially in this Court.

My lord, the inferior must give way to the superior. The same reason that the commons in parliament, of the 4th of the late king, judged of the invalidity of the record in James Damestris and Cesar's Case; for that it was not argued or debated, it was not of weight to be a sufficient record: the same reason, I say, may be given for an Order of Parliament not to be in force against an Act of Parliament. An Order of Parliament hath

but the same proportion with an Act of Parliament, that a verbal command hath with a command by record; for that there are not the debates, deliberations, and three times of reading of an Order of Parliament, as is at the establishing an Act of Parliament.

My lord, besides, any rational man will think that the wisdom and prudence of the parliament is such, that they will not lay up such a portion for their successors and children, as a record that shall be a law or precedent to after-ages, that shall be in effect, 'that J. S. was remanded to prison, by virtue of an Order of Parliament, where no cause is shewn in the one part of the return, nor lawful cause in the other.'

When the supreme authority of parliament, the law, and acts of parliament that contain law, say expressly, That 'if no cause, or lawful cause, be shewn in the return for imprisonment, that then the prisoner shall be set at liberty.' And anno 20 Edw. 3, cap. 1. 'That if commands come to the contrary; judges shall not cease to do even law and right.'

Besides sir Edw. Coke, in the 4th part of his Institutes, cap. 10, 'High Court of Parliament,' intimateth that an act of parliament is not pleadable in a court of record, but by record, or under the seal. And Mr. Sadler, in his Book, entitled, 'The Rights of the Kingdom, and Customs of our Ancestors,' saith as much. Then much less an Order of Parliament, that is not recorded upon the Parliament Rolls itself.

My lord, it is not to be imagined, neither do I think, that the parliament expected that their Order, the inferior part of their power, shall take place of the superior part of that power, the law and acts of parliament that command law, which is judicially here, as I said before. My lord, all acts of parliament that are unrepealed are their own: They are not theirs when they disown them by repealing. Until then they are with 'not otherwise' in force, and are law. My lord a parliament, as they command law, may be called the Wisdom and Reason of the nation.

Anno 4 Hen. 7, cap. 12, the law is called the 'Policy of the Nation.' Indeed it is so: Justice is the best policy, as I said before. None can demonstrate what Justice is, without the law be as the golden Mete-Wand, that sir Edward Coke cautions parliaments to leave all causes to be measured by, 4 part. Instit. fol. 41.

Upon the question of Hen. 8, to the Judges, Whether a man might be attainted of High Treason in parliament, and not to call him to his answer? The Judges' answer was, That an inferior Court could not in law or justice do so: And their Opinion was, That the higher the Court is, the more just they ought to be.

It is not to be supposed that a parliament will act contrary to their wisdom and policy, which is the law: Or that they would have

their inferior power take place of their superior power. Neither will the parliament plead against me with their power, no surely, but by law, legally; else they would have nailed up my prison doors with armed men, and never have suffered me to come to this bar. And if that they had not intended that I should have been acquitted, they doubtless would have shewn cause. I know there can be no lawful cause of imprisonment shewn against me.

My lord, Job's friends, they tell Job, that because he was guilty, in their opinion, in the sight of God, of sin, Job xxii. 4. 'Will he' (meaning God) 'reprove thee for fear of thee? Will he enter with thee into judgment?' As much as to say, that God would cut him off from amongst men, because he was sinful, and God powerful. But saith Job, (chap. xxxiii. 3.) 'O that I knew where I might find him, that I might come to his seat! I would order my Cause before him, and fill my mouth with Arguments. I would know the words which he would answer me, and understand what he would say unto me. Will he plead against me with his great power? No; but he would put strength in me. There the righteous might dispute with him,' &c. And, chap. xxxviii. ver. 32. God saith, 'Gird up thy loins like a man, for I will demand of thee,' &c. And here God declareth his power and wisdom visibly in the creation of creatures great in magnitude, as the Leviathan; sweet in influence, as the Pleiades; swiftness and courage of the horse in the day of battle; and so of the whole creation. That this great and glorious Eternal God, that gave a being to all beings by one only conception of his mind; he willed them to be, and they were: this God, you shall find, pleaded with Job by and by, in chap. xli. ver. 4. 'Hear, I beseech thee, and I will speak; I will demand of thee, and declare thou unto me.'

My lord, will the Parliament plead against me with their power, that is to say, what they may do? Surely they will not; but rather strengthen me, by affording me the benefit of the law at this time and place; which is the utmost of what I do expect, and that which they ought to do. By the which I shall arrive at my liberty, which is my right by law, in regard there appeareth no cause in the one part of the return, nor lawful cause in the other.

My lord, I have seen the copy of an Order of Parliament, bearing date the 21st of November present, that saith, 'That John Streater be and do stand committed to the prison of the Gate-house, Westminster, in order to a trial; and that Mr. Speaker do issue a warrant accordingly.' Without doubt this is the Trial intended by the Parliament, here at this place, to try whether there be cause of imprisonment, or not. The innocent need no other trial. The cause that is already shewn in the first part of the Return, is to be supposed true, and all the cause that was to be shewn, and none other; for that the second part mentioneth no cause at all. And if there had been lawful cause shewn,

it is not to be denied but it had been of force. By all which it appeareth, that they intended me the benefit of the law; which speaketh this language, 'That the Innocent shall be acquitted.'

My lord, an Order of Parliament is but as the first thoughts of a man, by which he intendeth this or that. An Act of Parliament, and the law, is like the second, third, and fourth thoughts of a man, wherein he altereth his first Resolutions, formed by his first thoughts, unto more safe and better resolutions. And it is not contradictory to himself at all, nor never a whit below him.

My lord, here are the Parliament's second, third, and fourth thoughts judicially in this court: it is law digested by councils, debates, time and practice, unto safety and conveniency. The which is for their honour to act by: the benefit thereof I pray.

My lord, the Return saith, 'I shall not be delivered but by Order of Parliament.' The Order of Parliament saith not such a word, but to be committed 'in order' to a Trial; at which I am.

My lord, the Return saith, 'I shall be committed prisoner to the Gate-house by order of parliament.' The authority of parliament, the law judicially in this court, hath committed me prisoner to the Marshal of this court; shall this be called a contradiction to the Order of Parliament? No, surely it will not stand so in the opinion of this court.

Neither can it be called a contradiction to the Order of Parliament, if I should be discharged of my imprisonment; because the authority of parliament, the law, saith, 'If there be no cause of imprisonment, I shall be discharged.'

The law intendeth but three things only to defend, in which all else is comprehended: they are Life, Liberty, and Estate. Liberty is the chief: not a liberty to do what one lists, either in obeying, or in commanding; but a just preserving liberty, that shall be for the good of society. It was this that our forefathers and we have contended for by arms: and being victorious, will the Parliament deprive us of the benefit of the law, which is the ornament of our triumph? No, my lord, they have declared to the contrary that they will not. Something of the like nature may be concluded from the Answer of the Council of State to my Keeper: the Keeper of the Gate-house, when he desired of them to know their pleasure, Whether he should allow the Writ of Habeas Corpus, or not, in regard I was a prisoner by their command; their answer was, They would leave it unto him. As much as to say, They intended not to deprive me of the benefit of the law.

My Lord Chief Justice Hyde is not now on this bench, who once was, and to his shame did deliver in effect this judgment, That for several reasons of state, the king may do or act contrary to law. My lord, I have power to kill this gentleman next me, but not by law.

It did better become Mr. Attorney-General

Heath, in his pleading for a corrupt interest (in the Cause of sir John Heningham,\* and others) at this bar, to alledge, 'That the king may act above and contrary to the law; that Mr. Attorney-General Prideaux, that is to plead in behalf of a state, that some supposers are laying a foundation of the kingdom of Christ. If he should, it would be the grandest inconsistency that possibly could be, to what they have declared, namely, tenderness, of our just Rights and Privileges. The which declaration hath invited a national expectation thereof; the which should be a sufficient law to them to do nothing that might deprive any individual, though the most inferior and inconsiderable part or person of the whole; because they were comprehended in the whole, unto which the promises were made.

My lord, upon the agreement of sharing the Roman empire made between Octavius, Antonius and Pompeius Sextus, it fell out that they agreed to feast aboard of Pompeius's Admiral-Galley, lying at an anchor off the head of Mount Misena: and when they were all aboard and merry, Menas the pirate came and whispered Pompeius in the ear; 'Come,' saith he, 'shall I cut cable, weigh anchor, and set sail, and not only make thee Lord of Sicily and Sardinia, but of the whole empire also?' 'No,' saith noble Pompeius; 'I have not learned to break faith, although it were to the gaining of an empire.' When he had invited them to a banquet, they should not be deprived of what they expected by imprisonment, or loss of their shares of the empire: such advice and such practices do better become pirates and thieves, than persons of virtue and honour; the which was in his power to have done.

My lord, seeing, as I say, that the Parliament did at the first declare that they would be tender of our Rights and Privileges; and seeing it is our privilege to have the benefit of the law; and seeing the law saith, 'That if there be no cause, there shall be no imprisonment;' and in regard there is no cause shewn, why I should be a prisoner: I do aver that the parliament cannot have greater dishonour put upon them, than for any one to alledge that they intended imprisonment to me, if there should no cause in law appear.

My lord, if there be any thing else alledged to be against me than what appeareth upon the Return and the Record, the law requireth you not to take notice of it. And seeing there is no cause, there ought to be no imprisonment: if it should, it would be injustice. Justice is one of the attributes of God, that by his dispensations he would have administered to men. The administration of injustice is a perfect fighting against God. I believe the Parliament would not be found fighters against God.

My lord, the philosopher saith, 'Where just law ruleth, there God may be said to rule.' If

you judge justly, you have no cause to fear. I expect it, as you will answer the contrary, at the dreadful Day of Judgment.

*Judge.* What have you to say, Mr. Attorney-General?

*Prideaux.* That which I have to say is not to argue, but to acquaint the court he is committed by an Order of Parliament, which is not to give an account to the court. It is their pleasure to commit him till he be cleared by an order of the same power. And I hope, my lord, you will not dispute it: for I know it is fresh in your memory, where orders of the like nature have been made by the parliament. He is to remain prisoner by the authority that put him there.

*Judge.* Yea, as in the case of Lilburne, Chetwin, and others, which after made their Address to the parliament; which if this gentleman do, I make no question but they will do according to law and justice by him, and no otherwise, since he is committed by them; and they only know the cause of his commitment.

Sir Thomas Witherington, Serjeant at Law for the Commonwealth. There has been two counsels have spoke something in behalf of the gentleman at the bar: one of them pleaded this, that there was an Order of parliament, but not an Act of parliament. My lord, an Order hath force as well as an Act. As for Mr. Norbury, he said, Part of the Return was true, and part was not true. If it be not true, he has an action of the case against the Keeper. Again, whereas he says, That all acts of parliament were made for the liberty of the people: truly so they are, but not to give leave to licentiousness.

*Judge.* Mr. Streater, one must be above another, and the inferior must submit to the superior; and in all justice, an inferior court cannot controul what the Parliament does. If the parliament should do one thing, and we do the contrary here, things would run round. We must submit to the legislative power: for if we should free you, and they commit you again; why here would be no end: and there must be an end in all things.—Where you say we are not to imprison you without cause shewn: it is true, we are not: but if there be any that do disturb the peace of the nation, we are to settle things in peace and quietness; for the cause of the law is to quiet the nation.—The second thing that hath been objected against the Return, was by Mr. Freeman: He says, The parliament hath not power to alter the laws. Why, they have the legislative power, and may alter and order in such sort as they please; they may daily. If they find any thing that is fit to be reformed, they may alter and reform them, and make laws new. It is strange a counsellor should say this.—Another Objection was, That there was no cause expressed. It is true, here there is not. We are judges of the law, and we may call inferior courts to an account why they do imprison him or that man against the known laws of

\* See the Attorney General's Argument in this Case, vol 3, p. 32.

the land; and they must shew cause to any man. In this case, if the cause should come before us, we cannot examine it, whether it be true or unjust: they have the legislative power.—Now whereas you say, It is but an Order of Parliament, and has not been three times read in the house: how can you tell but that it has been three times read? Indeed they used to read it thrice when the king and house of lords and commons sat; and so it may be now, for aught we know. But if it were but once read, we cannot call it into question, but must conceive it was on just grounds: and it may be they thought it not fitting to express a case in matter of state; for if they should express the cause, and we not able to judge of it, there would be nothing done in it. Therefore, gentlemen, we can do no more in it, and yet I hope we shall do according to justice, that the people may not be oppressed. If it had been a cause we could have meddled in, something might have been done; but now we see no cause it should be repealed.

Justice *Garmond*. God made man, and gave him a law to live by; and the laws of England are grounded on the laws of God: and in the laws of England every man is concerned. And now the parliament of England is grounded on the whole body of the nation. Now, if one power were not above another, things would go in a circle to and fro, and have no end: now this will bring them to an end, since the whole law of the nation is grounded on the parliament laws.

Judge *Nichols*. I am of the same opinion, every thing must be done in order: and 'God is the God of Order;' and therefore every thing ought to be done in order, and not in confusion. Now what the parliament does, we cannot dispute or judge of: their laws are to bind all people; and we are to believe they had cause for what they did. And for that you say an Order should be read three times; when I was a Parliament-Man, divers acts passed with one time reading. In the next place, you did distinguish between an Order and an Act of Parliament. Why, their power is a law, and we cannot dispute any such thing. And whereas you affirm it was once pleaded here, 'That the king was above the law, and might do what he pleased against the law,' that it was so here, I do not remember: but the parliament does not so.

*Prideaux*. I humbly pray he may be remanded to the Gate-house again.

Judge *Nichols*. There is a *pignus mobile*, or things would come into confusion. The parliament has the greatest power.

Capt. *Streater*. I desire I might be bailed; I shall be a prisoner nevertheless: The law accounteth one a prisoner though he be bailed; and if not bailed, I may be a prisoner a hundred years.

*Prideaux*. My lord, pray let him be sent to the Gate-house.

*Streater*. I desire then I may be a prisoner to this court. I am a wounded man, and, have

done service for my country, and deserve not to be shut up in a close hole. Besides, I have been a prisoner three days, contrary to the Order of Parliament, by order of law, to the marshal of this court; when the Order of Parliament saith, 'I shall be a prisoner to the Gate-house;' and if the law can warrant the court for the doing of the one, doubtless it will for the doing of the other. I am sure it is my right by law.

Judge. No, no; no such matter.

*Prideaux*. My lord, I heard this man say he has been wounded, and that he was for the parliament; but I am informed he was cashiered. He cited the Order of Parliament, and that they did not publish the cause wherefore; but I will speak it publicly, it is in order to his trial.

*Streater*. My lord, he speaks falsely: I laid down my Commission myself.

Judge. We are to judge honourably of the Supreme Power.

*Streater*. You said but now, my lord, you could judge of nothing but what was before you upon record.

Judge. Let him be sent again to the Gate-house; he was committed there. And, gentleman, you should do well to apply yourself to the parliament in the mean time; for while we are possessed otherwise, it must be our office that you must be sent back according to the Order of Parliament.

*Streater*. I never petitioned in my life; I shall not now begin.

*Prideaux*. When the cause is done, you may leave him as you found him.

Judge. You had your Habeas Corpus.

*Streater*. I could wish I had the benefit of it, as is my right by law. I desire that notice may be taken, that the same Judgment and the same Plea were adjudged illegal, arbitrary, and perfectly repugnant to law, the just rights and liberty of the people in parliament, the 4th of the late king, 1628, as in the case of sir John Heningham, sir Edmund Hampden\*, and others, at this bar.

Judge. The king was plaintiff against them, and he was but a feoffee in trust: The parliament is plaintiff against you, and they are a legislative power.

The Prisoner was carried back to the Gate-house.

#### *The Proceedings upon the Habeas Corpus in Hilary Term.*

In the vacation between Michaelmas and Hilary-term the parliament dissolving, Mr. Streater resolved to apply himself again to the law; he conceiving that the Order of Parliament was void, inasmuch as the parliament was dissolved. And accordingly, on Monday 23 January 1654, being the first sitting of the Judges in Hilary-term, he had Mr. Dormer of counsel, who moved the court for an Habeas Corpus. It was granted, and made returnable

\* See No. 127, vol. 3, p. 1.

on Thursday the 26th next following. At which time, the Keeper sent the body of Mr. Streater, with a return of the Habeas Corpus not signed. Which being in court, was refused to be received.

Mr. *Streater*. My lord, I am here brought to this bar, by virtue of an Habeas Corpus. I desire that the Writ with the Return may be read.

*Ld. Ch. Just.* Let it be read.

Mr. *Broughton*. My lord, the Return is not signed.

*Ld. Ch. Just.* If the Return be not signed we cannot take notice of it.

*Streater*. My lord, I desire that another day may be appointed by rule of the court.

*Ld. Ch. Just.* We cannot do so; we cannot take notice of you, whether you are the person or not, if the Return be not under your Keeper's hand.

*Streater*. My lord, I desire I may have an Alias Habeas Corpus.

*Ld. Ch. Just.* We cannot deny you that.

[The Alias Habeas Corpus was made returnable on Monday the 31st of Jan. 1654.]

*Streater*. My lord, I desire that I may by Rule of Court have assigned of counsel (with me) Mr. Twisden, Mr. Freeman, Mr. Wilde, Mr. Norbury, and Mr. Dormer.

*Ld. Ch. Just.* Let them be assigned.

Monday the 31st of January, 1654, Mr. Streater was again brought before the Court of Upper Bench, by virtue of his Habeas Corpus.

Mr. *Streater*. My lord, I am brought hither by virtue of an Alias Habeas Corpus. I desire that the Writ, with the Return, may be read.

The Clerk reads the RETURN.

“ ‘ Oliver Lord Protector of the Commonwealth of England, Scotland and Ireland, &c. To the keeper of the prison of the Gate-house, Westminster, in the county of Middlesex, or his deputies there, greeting. We command you, as formerly we have commanded you, that the body of John Streater, gent. in prison under your custody detained, together with the day and cause of his taking and detaining, by whatsoever name the said John is called therein, you have before us at the Upper Bench in Westminster, upon Monday next after the fifteen days of St. Hilary next to come; to undergo and receive those things which our court of Upper Bench aforesaid of him shall consider of in this behalf. And this you must not omit on any wise, and upon peril that will follow thereupon. Witness Henry Rolle, at Westminster, the 26th day of January 1654.’ ”

And the Return of this Writ appears in a certain schedule herunto annexed, and the Answer of Aquila Wykes, Keeper of the Gate-House prison in Westminster;

“ ‘ To his Highness the Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereof, in the Upper Bench at Westminster, at the day and place in the writ to this schedule annexed named; do

‘ certify, That before the coming of the said writ to me directed, that is to say, the 19th day of September, 1653, John Streater in the writ named was committed to my custody, and there detained by virtue of a Warrant from the later Council of State, the tenour of which warrant followeth in these words:

“ ‘ These are to will and require you to receive into your custody the body of John Streater, and him you shall safely keep prisoner in the prison of the Gate-house, he being committed for publishing seditious pamphlets against the state. Of which you are not to fail; And for so doing, this shall be your sufficient warrant. Given at the Council of State at Whitehall, this 12th day of September, 1653.’ ”

ROB. TICHURN, Presid.

H. LAWRENCE,

To the Keeper of the Gate-House. SA. MOYER,

J. HEWSON,

CH. HOWARD.’ ”

“ And the said John Streater is also detained by virtue of a Warrant under the hand of the Speaker of the Parliament; the tenour of which Warrant follows in these words:

“ ‘ By virtue of an Order of parliament bearing date this present 21st day of November, these are to will and require you to receive and take into your custody the body of John Streater, and him to keep and retain in safe custody, until he shall be delivered by order of parliament. Whereof you are not to fail, as you will answer the contrary at your peril. Given under my hand the 21st day of November, 1653. FRANCIS ROUX, Speaker.’ ”

“ And the said John Streater is also detained by Rule of the Upper-Bench Court; the tenour of which Rule follows in these words:

“ ‘ The Keepers, &c. against John Streater. Friday in 15 days of St. Martin, 1654. The defendant was this day brought in court by virtue of a Rule of this court, under the custody of the marshal of this court; And it is ordered, That the said marshal do deliver the body of the said Streater to the keeper of the prison of the Gate-house in Westminster, to remain under his custody according to the Order of parliament, upon the motion of Mr. Attorney-General.—By the Court.’ ”

“ And these are the causes of the detaining he said John Streater, whose body before the Protector aforesaid I have ready accordingly, the day and place in the said writ contained, as I am within commanded.

AQUILA WYKES, Keeper of the Gate-House.”

*Ld. Ch. Just.* Mr. Attorney, what say you to it? The Prisoner hath been here many times.

*Att. Gen.* My lord, I heard not of it.

*Streater*. My lord, I sent him notice the same day the writ was granted.

*Att. Gen.* My lord, he sent me a man that said he lived in Fleet-street, I do not know where.

*Ld. Ch. Just.* How cometh it that you did not send him other notice?

*Streater.* My lord, I beseech your lordship that I may not be intercepted by such pretences, and that I may not suffer any delay for want of such formalities. My lord, Mr. Attorney-General hath appeared often enough in this case: he cannot with credit pretend he is unprovided to speak to it.

*Ld. Ch. Just.* Let the Prisoner be here again on Friday.

[Mr. Streater was again sent back to the Gate-House, and was on Friday the 3d of February, 1654, brought by Rule upon the Alias Habeas Corpus.]

*Mr. Twisden.* My lord, I desire that the Prisoner may be bailed.

*Mr. Wylde.* I desire that the Writ and Return may be filed.

*Ld. Ch. Just.* Mr. Atkin, what have you to say why it may not be filed?

*Mr. Atkin.* Nothing, my lord.

*Ld. Ch. Just.* Let it be filed, and let the Prisoner be here on Thursday next.

*Streater.* My lord, I desire that I may have assigned of counsel with me, Mr. Latch and Mr. Windham.

*Ld. Ch. Just.* Let it be so.

[The Prisoner was carried by the Marshal of the Upper-Bench into the Upper-Bench Prison, Southwark; and on Tuesday the 7th of February, 1654, was again brought into Court, under the Custody of the Marshal of the Court.]

*Mr. Twisden.* I desire that the Prisoner may be bailed. He is committed by two Orders; the one from the Council of State, the other from the Speaker of Parliament, by virtue of an Order of Parliament. The Order of parliament is out of doors, the parliament being dissolved.

*Mr. Attorney-General* began thus: My lord, this gentleman the Prisoner stands committed by Order of Parliament: And whereas in his behalf the Counsel assigned for him have alledged, That the Order of Parliament is void, by reason, as they say, the Parliament is dissolved: My lord, Parliaments cannot be dissolved; the parliament are the same power that is in being now. And parliaments were to be once a year, as by the statute of the 4th of Edward 3, at which time he may be relieved. In the North parts, the Assizes can be held but once a year. But grant that the meaning of parliament was to deliver him themselves, and not that they meant the parliament to be on the 3d of September, 1654; yet for that they ordered that he should not be delivered but by Order of Parliament, I conceive he can be delivered no otherwise than by an Order of Parliament, nor by any other but a parliament. Possibly when that the parliament consisted of king, lords, and commons, an order of one or two houses, without a threefold consent, had not been binding: but now

the power that was in the lords and king is joined in the commons, and therefore is of greater force. And it is not material whether they shew cause or not; there may be good cause; and it cannot be presumed that the Parliament would commit a man, and have no cause at all for so doing. But without question, a parliament may commit men, and shew no cause. But suppose his commitment be in order to a Trial in parliament, will this court take upon them to judge in the cause? Or can they by Habeas Corpus bring the body of the prisoner and the cause before them, out of parliament?

The lord of Strafford was tried in parliament: I believe this court would not in such a case remove the Trial before them, nor indeed can they. Upon the return it appeareth, he is committed by Order of parliament, and to be delivered by Order of parliament: If they had intended he should have been delivered otherwise, they would have either said nothing, or have ordered he should be delivered according to law. When kings die, it is true, that Commissions do cease; but when Parliaments do dissolve, their acts do not cease. Besides, a parliament is the Supreme Court, and they do constitute other courts; and therefore it is not for other courts to question the proceedings of a parliament. It will not be expected of me to shew that the parliament had sufficient matter or cause of imprisonment.

To this the Judges answered, No, No: If he had any thing more to speak to the Order of parliament, that was it that was to be spoken unto.

*Mr. Attorney.* My lord, this gentleman might make his application for his liberty to the present authority elsewhere; and I doubt not but it would be granted him: For now parliamentary authority is in one person. My lord, I doubt not but the court will be cautious in meddling in this case, but will rather remand him to prison: 1. For that it may be that the proceedings against him are not yet ripe; it may be yet under examination. 2. For that this is the first precedent of the like nature, and it being of so great and high concernment.

*Mr. Twisden.* My lord, a Parliament may determine, and parliaments do determine; and when they do, their Orders also determine with them. It is true, that Acts of parliament do continue; but this is but an Order of parliament, and not an Act of parliament. My lord, we must come hither to be relieved; this is the place, this is the court appointed for relief in this case: We expect it, and, my lord, desire that the prisoner may be bailed. Besides, my lord, this is not an Order of parliament upon return, but a Warrant of the Speaker.

*Mr. Windham*, of counsel with the prisoner.—My lord, it is true, we find Writs of Error returnable in parliament, as in *Flowerdew's Case*, and in *Basset's Case* of Error given in this court of King's-Bench against Basset, in a Judgment for the king: Rot. Parl. 25 R. 2, num. 24. This is after trial of law, and not before. As

to the case of the lord Strafford, we know not but that by law he ought to have been impeached here. As to the Order, it is determined by law.

Mr. Wyld, of counsel with the prisoner.—My lord, the Order cannot be a bar but that the prisoner may be bailed. Besides, the Order is void, for that the parliament discontinueth; and it is ordained, 'That he or they that shall say the Parliament continueth, shall be guilty of an high offence.' An Act or Order of parliament is not a Judgment of parliament. We are here *coram Protectore*.

Capt. Streater. My lord, I should not at all undertake at this time, having so many learned counsel assigned, who attend my cause, and who have sufficiently urged enough law to warrant the Court for my discharge, but that the Attorney-General hath both last term and this term endeavoured to asperse me, to discourage the court, so as to delay or deny me justice: As the last term, by suggesting to the court that I was a dangerous person, and stood accused in parliament for high misdemeanors; and said that they were such, and so dangerous, that they for many secret reasons of state thought it convenient not to discover them. And this term, by saying, the last day of hearing, that I was a stubborn refractory person, and would not make my application to the present authority, where he assured me that I might have my liberty for asking for it; and that my endeavours were to strike at the very power of parliament.—My lord, as to what great and high matters or things that were by him suggested to this court to be in parliament, certainly it would have appeared upon the return: They have not been intercepted, as to time, in the making of their return to the Habeas Corpus; they have also had time to make several returns; and lastly, to amend the returns by rule of court. Without question, my lord, if they had had other cause, they would have made it appear. However, your lordship can take no notice of any thing but what appeareth upon Record.—My lord, as to the other that Mr. Attorney urgeth, That I am a stubborn person, and refuse to make my application to the present authority; I deny it: my actions give another testimony of me, in this applying myself to the present authority in this manner, and at this place, by law; this is the proper and only superior court for relief, in case of false or long imprisonment: it ever was in this court settled by law, the supreme authority of this nation, and the only authority of those that will take upon them supreme power. The Lord Protector hath sworn to govern this nation according to its laws, statutes and customs: and here I make my application to the present authority judicially in this court. The Writ of Habeas Corpus is in the name of the Lord Protector: by which it appeareth, that those suggestions are false, and that I own the present authority in its proper channel, and own its true basis, by applying myself to the present authority here in this court.—My lord, I should

have insisted upon the whole matter now before you; but I see that there hath been enough urged by my counsel, to show the invalidity of the Order of parliament, the only business where all sticketh.—My lord, I shall not spend time to answer Mr. Attorney-General, for that the substance of his Argument is but of little weight, and not worthy of any answer.

[Here followeth the Argument that Mr. Streater had prepared to have insisted upon in this place: but for that he perceived the opinion of the court was, that the Order of parliament was not in force now, he omitted to urge it further. But for general satisfaction, it is here presented the reader word for word, according to his Copy.]

I am brought here by virtue of an Habeas Corpus, which doth require that cause be shewn why I am detained a prisoner; not who committed me to prison. Upon the Return, there is in the first part a cause, but not a lawful cause: in the second part of the Return, no cause at all.—My lord, the intent in law of an Habeas Corpus is to relieve prisoners, notwithstanding of special commands for imprisonment: as appeareth by an Act of Parliament in the 16th of the late king, intitled, 'An Act for abolishing of the Star Chamber, and for regulating the Council Table;' which ordaineth, 'That notwithstanding of special commands for imprisonment, the party so imprisoned shall by an Habeas Corpus be brought before the Judges of one Bench or other: and if the cause of his commitment be legal, he shall be remanded; if no cause, (that is to say, no lawful cause) he shall be set at liberty; and if it be doubtful, then the prisoner shall be bailed.' This Act reciteth several Acts, as that of 17 R. 2, c. 31, 42 Edw. 3, c. 3, 28 Ed. 3, c. 9, Magna Charta, c. 29, and the Petition of Right. These Acts declare, that this is the intent and meaning of the aforementioned.—My lord, with these agree the learned Arguments of sir Edward Coke, sir Edward Littleton, and Mr. Selden; together with the Resolution of the Commons in Parliament 1628 thereupon, in these words:

*Die Jovis, 3 Aprilis, 4 Caroli Regis.*

"Resolved upon the question, That no freeman ought to be detained or kept in prison, or otherwise restrained, by the command of the king, or the privy council, or any other, unless some cause of the commitment, detainer, or restraint, be expressed, for which by law he ought to be committed, detained, or restrained.—That the Writ of Habeas Corpus may not be denied, but ought to be granted to every man that is committed or detained in prison, or otherwise restrained, though it be by a command of the king, the privy council, or any other, he praying the same.—That if a freeman be committed or detained in prison, or otherwise restrained, by the command of the king, the privy council, or any other, no cause of such commitment, detainer, or restraint, being expressed, for which

by law he ought to be committed, detained or restrained, and the same be returned upon an Habeas Corpus granted for the said party; then he ought to be delivered or bailed."

2 part Instit. fol. 52. 'The Warrant or Mitimus ought to contain lawful cause.' Sir Edward Coke, in his first general reason why a Habeas Corpus is to remove the body notwithstanding of special commands, saith, "That imprisonment in law is counted a civil death, when men are taken from their house, wife, children, country, friends, and familiar acquaintance, to live with wicked and wretched men."—*Mirror*, chap. 2, sect. 9, saith of prisoners and prisons thus: "A gaol is nothing else but a common prison: and as a leper, or a man who hath a diseased body, is not to be suffered to dwell or remain amongst men who are sound, &c. therefore mortal offenders ought to be separated from the society of people, to the end the innocent be not infected with their offences."

Now, my lord, if it be so, it was of absolute necessity for the law to provide against long imprisonment as well as wrong imprisonment, notwithstanding any special commands. The writ of Habeas Corpus and the benefit by law, is the undeniable right of every Englishman; it is called 'the high point, the only point.' Nay, the Commons in Parliament, of the 4th of the late king, in their Conference with the Lords, say, 'That they had recovered the body of liberty,' by clearing of this point. In this is the only difference between slaves and freemen, villains and freemen.

My lord, the Law of England doth settle a freedom in the people of England, in their life, liberty, and estate: it doth relieve against any thing that shall by any be done to their detriment, either in one or other.

—*Mirror*, chap. 2, sect. 13, of Appeals of Imprisonment thus: "Darling here appealeth Weloc, for that whereas the said Darling, &c. the said Weloc came and arrested the said Darling, brought him to such a place on such a day, and put him into the stocks or in irons, or in other pain or inclosure: such a day, this felony he did feloniously."

My lord, here we see the law ever did allow of a remedy to be had against false Imprisonment. Here is no cause of imprisonment at all shewn, in either one part of the Return or other; therefore I ought to be set at liberty without bail, as is expressly provided in the Act of the 17th of the late king, in these words: 'If there appear no cause of imprisonment upon the return, then the prisoner shall be set at liberty, and not bailed.'—My lord, he that is bailed is still a prisoner; for he is a prisoner unto his bail. If bailed, it is to be presumed a cause, though such upon which he may be bailed. The following clauses of this Act explain the meaning to be so, in these words: 'If the cause be doubtful, then the prisoner shall be bailed.'

My lord, if it should be objected, That the greatest and only cause of my imprisonment is an Order of Parliament, or a warrant grounded

upon an Order of Parliament, that saith I shall not be delivered but by Order of Parliament; I have seen a copy of the Order of Parliament, wherein there is not any such word mentioned; but it only saith this, 'That Mr. Speaker do issue forth a Warrant' (according to the Order) 'for my imprisonment,' &c.

But for that your lordship is not to take notice of any thing but what appeareth before you upon Record, I shall make no use of that; I shall not need. First, for that the Order itself is out of doors, the Parliament being dissolved. Sir Edward Coke, 4 part Instit. fol. 23, chap. 'High Court of Parliament,' saith, 'That an Ordinance of Parliament bindeth not in succession;' then much less an Order of Parliament. Besides, if Orders of Parliament were binding in succession, there would be no need of Acts of Parliament. And more especially such Orders are not binding, that there is no reason or law in them, but are opposite to reason and law.

Nay, but an Act of Parliament could not make such a Return to be good or allowable, as this, that shall mention no cause for which a prisoner is committed; it is against reason a man should be committed for nothing; and if there appear no cause upon the Return, this Court is to presume there is no cause, and therefore ought to deliver the prisoner, and cannot but look upon such Returns as unreasonable, and against law.

The Doctor and Student," pag. 4. chap. 2, saith, 'That such Statutes, Ordinances and Prescriptions, as are not according to reason, or are against reason, they are not Statutes, Ordinances, or Prescriptions, but are things void in law.'

Again, my lord, a Parliament cannot over-rule just proceedings in or by this Court, that are according to law and justice: but a Parliament may over-rule proceedings in this Court that have error, or are not according to law and justice.

My lord, we understand Parliaments to be legislative powers, and therefore not to be the executive: it is not for law makers to be Justices of the Peace; a Sheriff cannot be a Justice where he is Sheriff. There is a maxim, 'That law-makers must suppose all men to be evil, and therefore they make laws against such offences in all persons: But Judges of the law must suppose all men good, until conviction.' If so, my lord, a Parliament are not competent Judges who and who not shall be prisoners. But here are the Judges, before whom I am; here is the place where I am, that a cause of that nature should be determined.

My lord, I dare confidently aver, That if ever it had entered into the consideration of our former preceding parliaments, that a succeeding parliament would ever do such a thing as commit a man for no cause at all, they would have provided against it by an act of parliament, in testimony of their abhorring of so great an absurdity as it is. Anno 1 H. 4,



c. 14, it is provided, That 'Appeals are not 'in any wise to be pursued in Parliament.' No man can imagine it to be lawful in any inferior power to a parliament. If so, it cannot be lawful in a superior power.

Upon the question to the Judges by Hen. 8, "Whether a man that was forth-coming, might be attainted of High Treason by Parliament?" Their Answer was, "That an inferior Court could not do so;" they thought a parliament would not: Their Opinion was, "That the higher a Court is, the more just they ought to be, to give example to inferior Courts."

4 Part Inst. fol. 37, chap. "High Court of Parliament:" "If it be necessary for inferior powers to shew cause of commitment, it is as absolutely necessary that a superior court should."

From whence it may be concluded, That were the parliament in being, yet I might by law be relieved by this Court.

1. For that the law doth warrant my discharge, in case to cause of imprisonment appear in the return; as by the 17th of the late King, who had then the executive power in his hands, as supreme magistrate: And the same reason why that it should be limited and bounded when it was distinct from the legislative and judicial, may be given, why it should be limited when they are all joined in one; which is, That it may not extend to grieve any contrary to reason and law.

2. That none ought to be taken or arrested, but by such against whom a remedy may be had in case of false imprisonment.

It was sir John Markham's opinion, That 'the king could not arrest, because a remedy 'could not be had against him in case of false 'imprisonment.' Much less a remedy be had against a parliament, that may possibly arrest or commit men upon false suggestions.

Again, My lord, if it had been an act of parliament that had provided I should be a prisoner in general words, and had provided I should not have had the benefit of an Habeas Corpus, I conceive I might have been relieved by an Habeas Corpus. This I suppose, if in case an act could be made against law and reason, as such an act as should deprive me of a common benefit that is due unto all, and to every individual, throughout the whole nation.

Parliaments ever made it their work, (as in duty they ought) to keep parallel to law and reason: they ever did make laws agreeable to both. But the judges of the law, in open courts of judicature, did judge by those laws: Nay, parliaments ever did advise with the judges of the law. The judges of the law were as the watchmen or sentinels to the just liberty of the people; and our laws the bulwarks of defence.

Mr. Waller, in a Speech in Parliament at a Conference of both houses, the 6th of July, 1641, saith, "That out of parliaments all our courts of justice are governed and directed by the judges of the law; and in parliaments, the lords and commons were assisted by them:

otherwise," (saith he) "it might be stiled *Parliamentum indoctorum*." And further he saith, "That judges that delay justice, or give false judgment, or opinions that are contrary to law, that they are no other than conspirators against the Commonwealth."

My lord, Mr. Attorney-General hath not omitted to possess this Court with strange apprehensions of the dangerousness of me, both in what he urged in this court the last term, of dangerousness, and this term, of stubbornness: so that as much as in him lay, by his false suggestions, to prevent me of my right by law; as in the words of your lordship, desiring that I might be remanded till my stomach came down.

My lord, you sit here to raise the spirits, minds, and stomachs of men, by doing of them right by law, to encourage them to improvements and industry, by defending them in life, liberty and estate, as the law requireth and intendeth.

My lord, Articles were exhibited against sir Robert Berkley\*, one of the Justices of the King's-Bench, and others. The substance of the first Article against sir Robert Berkley, was, "That he did traitorously and wickedly endeavour to subvert the fundamental laws and established government of England, by traitorous words, opinions and judgments." The 10th Article: "That the said sir Robert Berkley, being one of the Justices of the Court of King's-Bench, and duly sworn as aforesaid, in Trinity term 1637, deferred to discharge or bail Alexander Jennings, prisoner in the Fleet, brought by an Habeas Corpus to the bar of the said Court; the return of his commitment being, That he was committed by two several warrants of the lords of the council, dated the 5th of November, 1636, the first being only read in Court, expressing no cause; the other for not paying messenger's fees: he was remanded in Michaelmas term. After, the said Jennings being brought by another Habeas Corpus before him, and the same return, yet the said sir Robert Berkley refused to discharge him, &c."

My lord, I hope this Court, nay, I doubt not but that you will eye the future, and judge according to law and reason, and not by discretion.

My lord, such advice followed, as Mr. Attorney gave, is the ordinary cause of changes in states and commonwealths.

1. Injustice brings the judgments of God upon a nation.

2. Injustice discontents a people, and discontents are the ordinary foundations that changes are laid upon.

It was but the other day the Lord Protector took an Oath to govern according to the laws, statutes and customs of this nation: and now his Attorney-General would have matters ruled by discretion in this Court, contrary to law and reason, to pull men's stomachs down.

\* See vol. 3, p. 1283.

My lord, I make my application to the present authority in its proper channel, where of right I ought to be relieved here in this case of mine by an *Habens Corpus*. My lord, I do aver, that my life, liberty, or estate, cannot be taken away, or given unto me, but where the law doth it. My lord; God himself ruleth by law, eternal, moral and natural; and they have certainty in them: and he ruleth not otherwise, or contrary to them. And can it be imagined, that there is a mortal living, that will think it a diminution to his honour, if men choose the law for their sanctuary, rather than their changeable affections, and mutable will and pleasure?

There is a maxim, "That the law delighteth in certainty, and it doth abandon uncertainty, as the mother of all debate and confusion, than which there is nothing more odious in law."

My lord, another reason why I make my application to the present authority this way rather than any other, is, that the Record in this case will be of singular use and benefit, not only to the present, but to future ages; the which I do in duty, in regard a man ought to prefer the good of his country before a private good. The contrary will tend to the subverting of our English liberties. Our forefathers left us a law, by which we might demand justice, and not be necessitated to make use of friends to beg justice.

Mirror, chap. 3, sect. 6, "Of exceptions to the power of a judge," thus it is: 'Sir, I demand the hearing and sight of your Commission, by which you claim Jurisdiction over me.'

Anno 13 Edw. 1, c. 3, 'When any is impleaded before any justices, and doth alledge an exception, praying that the justices will allow it; which if they will not allow, &c. he shall require the justices to put to their seal, &c.'

My lord, this law of England is a law of freedom, and a law for freemen, and not for slaves: it is a law that settleth a right in its subjects.

Now, my lord, having presented your lordship with what the law accounteth of imprisonment, as in the Writ of *Mainprise*,

'Whereas thou A. hast delayed to deliver B. to the no small grievance of him the said B. and manifest peril of his life.'

And, page 162, Fitz-Herbert's *Natura Brevium*; of the Writ de *Homine Replegiando*. The king, 'Whereas A. hath complained to us, &c. We command you that herbe replevied, &c. that we may hear no more a clamour for want of justice.'

Seeing the law relieveth as well against long imprisonment as wrong imprisonment; and seeing that there is no lawful cause of imprisonment shewn in the first part of the Return, nor cause at all in the second: although it be grounded upon an Order of Parliament, it is void in a two-fold consideration. First, for that the parliament is dissolved. Secondly, for that it is against law and reason: And, also

considering that this Court is the highest Court of Judicature that can relieve in this case; and it being contrary to reason, that a legislative power should be an executive power, for they will be parties to judge by their own law, they will vindicate their own commands, and will take upon themselves to give their sense, possibly different from the letter of their own commands.

And therefore it is safer for the Judges of the law to judge by the letter of the law, and not otherwise.

Mr. Robert Brook, Serjeant at Law, in his reading upon the 16th chapter of *Magna Charta*, saith 'If a man hath judgment to be hang'd, and if the sheriff do behead him, it is murder.' The letter of the law is duly to be observed, and not to be varied from upon any pretences of matters of state whatsoever. All which considered, I pray to be discharged, as the law hath provided: your lordship is judge of the law.

Mr. Attorney. My lord, for aught we know, this is a Judgment in parliament. If it be not, yet it hath the same stamp that an act hath; that is to say, parliamentary authority. If this Order be not good, the prisoner hath an action of false imprisonment against the jailor. If the Order die by the dissolution of the parliament, the jailor ought to have set the prison-doors open unto the prisoner at the time of the dissolution of the parliament.

Mr. Tinsden. My lord, they have not returned an Order of Parliament, but a Warrant from the Speaker of Parliament.

Chief Justice Rolle. Mr. Attorney, what if the parliament by Order do appoint a committee, the parliament dissolved; doth the Committee continue by virtue of that order, or not?

Mr. Attorney. I think the persons are dissolved: but although it be said by Order of Parliament, I think that it is not much material whether the word Act, Order or Ordinance be used. My lord, it is by parliament.

L. C. J. Rolle. By your favour, Mr. Attorney, it is the word Order, Act or Ordinance, we must take notice of. How shall we know how to judge, but by the word or letter to direct us?

Judge Aske. Mr. Attorney, if an Order of parliament shall be in force after the dissolution of a parliament, and there be an Order made for the commitment of one or more, as in the case now under consideration; I pray which way shall the subjects be relieved, if not this way, in case we should live to see a parliament but once in one age, as in the latter end of the reign of king James, and as in the reign of the late king?

L. C. J. Rolle. This Court is the proper Court to relieve in this case; this Court is a standing Court, and the law doth adjourn it from time to time; but a parliament is a new Court, they appear, and are always terminated by new writs.

Mr. Attorney. The prisoner knoweth he might have his liberty for asking for.

**L. C. J. Rolle.** A man is not bound to do that. Well, let the prisoner be remanded until Saturday; and then we shall deliver our Opinions: it is a weighty business. And, gentleman, in the mean time you may make your application otherways for your liberty.

**Mr. Streater.** My lord, the law hath provided no other way, and I am bound to take notice of the way the law hath appointed. Our forefathers knew no other way. My lord, I desire that I may have the liberty to go to my counsel with my keeper: both the last term, and this, I have not at all advised with my counsel.

**L. C. J. Rolle.** That will not be denied you **Mr. Wyld.** My lord, it was moved this term, and it was denied, being opposed by the other side, but it was before the writ was filed. And I suppose that the Court may grant the liberty to the prisoner under the custody of their own marshal.

*Saturday, February 11.*

The Prisoner was brought again to the bar under the custody of the marshal of the court.

**L. C. J. Rolle.** Sir, have you your counsel here?

**Mr. Streater.** Yea, my lord.

**L. C. J. Rolle.** Where are they?

**Mr. Windham.** I am of Counsel for the prisoner.

**Mr. Streater.** My lord, here is also **Mr. Wyld**, **Mr. Freeman**, **Mr. Norbury**.

**L. C. J. Rolle.** Deputy-Marshall, go into the Chancery, and acquaint **Mr. Attorney-General** that we are going to deliver our Opinions in **Streater's** Case: and if he please to be present, he may; or if he hath any thing more to urge.

**Mr. Pain**, Deputy-Marshall. My lord, I have been with **Mr. Attorney-General**; and he said he will be here immediately.

[After a little space of time **Mr. Attorney** cometh into the Court]

**L. C. J. Rolle.** **Mr. Attorney**, here is **Mr. Streater** again by rule of Court. He hath been a long time in prison; and I see here is nothing come against him that is material.

**Mr. Serjeant Twisden**, of Counsel for the Prisoner. My lord, we desire that he may be bailed.

**L. C. J. Rolle.** What, have you any thing more to say, **Mr. Attorney**?

**Mr. Attorney.** My lord, I thought I should have heard of him; but I did not. The court must do justice: he is committed by Order of parliament. My lord, if you will undo an Order of parliament, he is to be delivered; but I hope the court will not.

**Mr. Windham.** The Order of parliament is undone by the parliament's being dissolved.

**Mr. Attorney.** Commissions of Sewers are granted by parliament, and they do continue after the parliament is dissolved. Gaol-delivery is but once a year in the north-parts: And I suppose the next parliament will be

VOL. V.

sitting before he hath been a year in prison; at which time he may be tried, or delivered: and although this be called an Order of parliament, yet it was acted by parliament.

**L. C. Just. Rolle.** But all that the Parliament acteth are not Acts of Parliament. The first part of the Return is too general: It mentioneth not what Books, nor whose Books, or where they were, or when published. The second part of the Return is grounded upon an Order of Parliament: We are to take notice when a parliament sitteth, and also when it is dissolved: or when it endeth or determineth. Discontinuance is a determination. A writ of error many times is made returnable in the next parliament; but that lieth after trial at law. The word 'Order' is a proper phrase to that which is not an Act. An Order of Parliament is not binding in succession: How shall the next parliament take notice of a former parliament's Order? Committees that are appointed by Order of Parliament do cease upon the dissolving of the parliament. I have been of the parliament: I ever found parliaments of the same opinion. We must look to the first imprisonment and no farther; if you had returned other cause, we should have taken notice of it. We do not reverse the Order of Parliament; that is reversed by the parliament's being dissolved: And it being dissolved, there is no visible way how the Prisoner shall be relieved, though there may be a probable way.

**Judge Ask.** I am of the same opinion; and that it could not be, that the Order of Parliament, by saying he should not be delivered but by Order of Parliament, but that they meant by the same parliament, and not by a successive parliament. If it should be taken to be by Order of the next parliament, where shall be the Liberty of the Subjects? Or how shall they be relieved in long intervals of parliament? As in the reign of king James, and the reign of king Charles, we had not parliaments in many years together; and although it be so, that the parliament, by the statute of the 4th Edw. 3, should be once a year, or oftener, if need be. Besides, here is no succession of parliament, but a dissolution. Another parliament must be another session; and therefore an Order cannot be in force until another session. If they had made an Act of parliament, or passed a Judgment of parliament, it had been another case.

Upon the consideration of the whole matter, the Judges' Opinion was, That the Prisoner ought to be discharged, and this Rule entered. Saturday next, after eight days of the Purification, 1653.

The Lord Protector against John Streater, gent.

"The Defendant was brought into Court by the Marshal, upon Habeas Corpus; and by the court discharged of his imprisonment, by the motion of **Mr. Serjeant Twisden**.

'By the Court.'

L. C. Just. Rolfe. Sir, you will do well to carry yourself conformably to the present power, and walk modestly.

Mr. Streater. My lord, I ever have been, and I hope shall be, a subject to government, so as the law requireth me to be: It is not my duty to be otherwise subject.

P. S. If you observe the tenor of the Writ of Habeas Corpus, as it is observed by Mr. Streater in his last Argument, that the Writ doth only require that cause be shewn why the party is imprisoned, not who did commit the party to prison. If any cause lawful was returned, then the party is to continue still in prison; but without cause no commitment, from what power soever, can or ought, in law or reason, to be binding. That it is the cause only for which a prisoner is committed, that cutteth the prisoner off from the benefit of a Habeas Corpus, and not the will, pleasure, or power, of those in power. Here take sir Edward Coke's Nine General Reasons, why a Habeas Corpus is to relieve against illegal or long imprisonment \*.

The First General Reason is drawn *à re ipsa* from imprisonment, *ex visceribus causæ*, be it those or other imprisonments, which are divided into three parts. 1. No man can be imprisoned at the will and pleasure of any, but he that is bound, and a villain; for that imprisonment at will is *Tuiles lay haut et base*, nec *propria quarto modo* to villains. 2. But if freemen of England might be imprisoned at the will and pleasure of the king, or any other's command, then were they in worse case than bondmen and villains: For the lord of a villain cannot command another to imprison his villain without cause, as of disobedience, or refusing to serve; as it is agreed in our books. 3. Imprisonment is accounted in law a civil death: *Hereditas, domus, familiam, vicinos, patriam*; his house, his family, his wife, his children, his neighbours, his country, and to live among wretched wicked men. If a man be threatened to be killed, he may avoid a forfeiture of lands, gifts, of goods, &c. So it is, if he be threatened to be imprisoned, he shall do the like, for that is a civil death.

The Second General Reason is, a *minoræ ad majus*: *pæna corporalis est majus qualibet pecuniaria*: But the king himself cannot impose a Fine upon any man. But it must be done judicially by his Judges, *per Justiciarios in curia, non per regem in Camera*. And so it hath been resolved by all the Judges of England.

The Third General Reason is drawn from the number and diversity of remedies, which the law giveth against imprisonment, viz. *Brevia de homine replegiando, de odio et atia, de Habeas Corpus, et brevis de manucaptione*. The former of these are antiquated; but the writ *de odio et atia* is revived, for that was given by the statute of Magna Charta, cap. 26.

\* See the Proceedings concerning the Liberty of the Subject, *ante*, vol. 3, p. 126.

And therefore though it were repealed by the statute of 28 Edw. 3, cap. 9, yet it is revived by the statute of 43 Edw. 3, cap. 1, by which it is provided, That all statutes made against Magna Charta are void. Now the law would never have given so many remedies, if the freemen of England might have been imprisoned at free-will and pleasure.

The Fourth General Reason is drawn from the extent and universality of the pretended power to imprison; for it should not extend only to the commons of the realm, and their posterity, but to the nobility, and the realm, and their successors: to all persons, of what condition, or sex, or age soever; to all judges, officers, &c. whose attendance are necessary, without exception of any person.

The Fifth General Reason is drawn from the indeliteness of time: The pretended power being limited to no time, it may be perpetual during life.

The Sixth General Reason is drawn *à dedecore*, from the loss and dishonour of the English nation, in two respects: 1. For their valour and power, so famous through the whole world. 2. For their industry: For who will endeavour to employ himself in any profession, either of war, liberal science, or merchandize, if he be but tenant at will of his liberty? And no tenant at will, will support or improve any thing, because he hath no certain estate. And thus it should be both *dedecus et damnum* to the English nation: And it should be no honour to the king, to be a king of slaves.

The Seventh General Reason is drawn *ab utili et inutili*: For that appeareth by the statute of 36 Edw. 3, that the execution of the statute of Magna Charta, 5 Edw. 3, 25 Edw. 3, and 28 Edw. 3, are adjudged in parliament to be for the common profit of the king, and of his people; And therefore the pretended power being against the profit of the king, and of his people, can be no part of his prerogative.

The Eighth General Reason is drawn *à tuto*: For it is safe for the king to express the cause of the commitment, and dangerous for him to omit it. For if any be committed without expressing the cause, though he escape, albeit the truth be it were for treason or felony; but if the cause be expressed to be for suspicion of treason or felony, then if he escape, albeit the truth be it were treason or felony, yet the escape is neither felony nor treason; but if the cause be expressed to be for suspicion of treason or felony, then if he escape, albeit he be innocent, it is treason or felony.

The Last General Reason is drawn from authorities, 16 H. 6, *Means de Fait*, 132, by the whole court; The king in his presence cannot command one to be arrested, but an action of false imprisonment lies against him that arresteth. 22 H. 7, 4, Newton, 1 H. 7, 4. The opinion of Markham, Chief Justice to Edw. 4; and the reason, because the party hath no remedy.—Fortescue, cap. 8. *Propria ore nullus regum usus est*, &c. to commit any man.—4 El. Plo. Com. 236. The common law hath so

admeasured the king's prerogative, as he cannot prejudice any man in his inheritance: And the greatest inheritance a man hath, is the liberty of his person; all other are accessory to it.

This Case is shortly reported in Styles as follows:

*The PROTECTOR and Captain STREATER.*

Hill, 1654. Ban. Sup.

Captain Streater was brought in Court by Habeas Corpus, and upon the return, read and filed, it appeared that he was committed by an Order of Parliament, for publishing scandalous and seditious Books. Twisden moved that the prisoner might be bailed, because that the Parliament is now dissolved, and by consequence the Order by which he was committed, is of no force. Mr Attorney General, on the other side, urged, that the Parliament was not dissolved, but only the meeting of those persons in Parliament was dissolved, for the Parliament by the ancient law is to be every year, so that this is but in effect an adjournment, and not a dissolution; and besides, this matter for which the prisoner stands committed cannot be here inquired of, and so the cause of his commitment shall be intended to be good, and the Parliament may commit without shewing the cause of the commitment, and this commitment may be in order to his trial, and the prisoner is not without remedy, for he may apply himself to the supreme authority, to whom the Parliament have resigned their power. Twisden, for the prisoner, confessed, that this Court cannot be judge of the Parliament; but this Order by which he is committed differs from an Act of Parliament, for this is temporary, and determineth; and although the authority of Parliament ceaseth not, yet a particular Parliament may be dissolved, as this was.

*Windham.* When a Parliament is dissolved, the proceedings there are determined. *Flourdeu's Case*, 1 H. 7; the *Latine Case*, and the Parliament is now dissolved, and not adjourned, and a Parliament dissolved is not like the Courts of Justice here in the vacation time.

*Wild.* This case is not like to the case where this Court remanded a prisoner committed by the Parliament sitting the Parliament, for the prisoner here is *coram Protectore*, who may deliver him.

*Capt. Streater.* Mr. Attorney labours to asperse me, but shews no cause or crime for my commitment, and I am here before the Protector in his own Court.

*Att. Gen.* Only the persons and their convention is dissolved, but not the Court, no more than this Court is by the demise of the King, or in the vacation time, and I must refer it to the Court how far you will intermeddle in this case, and this Order by which he stands committed may be his judgment there, and

and there he cannot be delivered; and I know no difference between an Order and an Ordinance of Parliament, and the stamp and authority of Parliament is upon this Order; and if the prisoner's counsel say true, then he may have an action of false imprisonment against his gaoler.

*Twisden.* Here is no Order of the Parliament returned, but it expresseth that he was committed by the Speaker by virtue of an Order of the Parliament.

*Rolle (Chief Justice).* We examine not the Orders of Parliament, but the question is, whether the Order doth now continue, and I conceive it is determined by the dissolution of the Parliament, and so would it have done by prorogation of the Parliament, because there is another session, and we can judge no otherwise of Orders of Parliament but by the words of them.

*Ask, (Justice).* If one that is committed by Order of Parliament cannot be delivered until another Parliament, the people's liberty will be lost, for there may not be a Parliament in many years.

*Rolle, (Chief Justice).* A new Parliament hath not reference to the old, but it is a new Court created upon new summons, and why may not the prisoner be bailed without these disputes? although he may apply himself elsewhere.

But the Court would advise, because they perceived the prisoner stubborn.

At another day, Mr. Attorney, upon the prisoner's appearance again upon his Habeas Corpus, said, that he had no more to say than what he had formerly offered, only he added that it was a tender and a leading case, and therefore to be well advised of.

*Rolle, (Chief Justice).* For the first part of the return, I conceive ~~is too~~ general, for it doth not appear in what the books are scandalous, for the publishing whereof he was committed. 2. I conceive that the Order of Parliament ceaseth with the Parliament which is dissolved; as an Order of one Session of Parliament ends with the Session, and is not like an Act, which continues after the Parliament, and all Committees made by Order of Parliament do cease by dissolving of the Parliament, but those which are made by Act of Parliament do continue afterwards; and this individual Parliament being dissolved, they can now make no further Order, and so the prisoner may be perpetually in prison, and he hath already laid long in prison, and therefore it is reason he should be bailed.

The Prisoner was admonished to be quiet, and not henceforth to disturb the State. The prisoner was ordered to bring sureties to be bound in 500*l.* for his appearance here the next Term, and *sic de die in diem* until Mr. Attorney will proceed against him, if he will proceed at all.

193. The Trial of Mr. JOHN LILBURNE, at the Sessions of the Peace held for the City of London, at Justice-Hall in the Old Bailey, for returning into England, being banished by Act of Parliament\*: 6 CHARLES II. A. D. 1653. [Written (the chief part) by the said John Lilburne.]

I WAS Counsel or Proctor for my uncle, George Lilburne, esq. and one Mr. Josiah Primate, &c., about a Colliery taken from them in the county of Durham, by force and violence, by sir Arthur Haslerig†; which he by his certificate computes to be worth 5,000*l.* sterling per annum. About which Colliery the said Mr. Primate preferred a Petition to the Parliament, upon the 23d of December, 1651, in the delivery and management of which I appeared, as by the declared law of England I might justifiably do. Which Petition being by the Parliament referred to a committee to examine it, who spent twelve or thirteen large hearings thereupon; and upon the 15th of January, 1651, new stile, the Chairman thereof, Mr. Hill, made his report to the house: but what it was, we never were permitted to see nor to hear read. And as some members of Parliament have since told me, he made his report quite contrary to, or short of the evidence which was given in: whereupon the Parliament, the said 15th day of January, voted the aforesaid Mr. Primate's Petition to be false, malicious, and scandalous; and that sir Arthur Haslerig is not guilty either of Oppression or Tyranny, in the carriage and prosecution of this business; and that all the copies of the said Petition (which, relating only to Primate, is not here inserted) should be burnt by the hands of the common Hangman. And voted Mr. Primate to pay

7,000*l.*, or to lie in prison till he pay it; which is all his punishment. And then the same day they passed certain Votes against me, which as they themselves, by special order of the 17th of January, have printed them, *verbatim* thus follow:

“Resolved, That the fine of 3,000*l.* be imposed upon lieutenant colonel John Lilburne, to be paid to the use of the Commonwealth. That he be fined 2,000*l.* more, to be paid to sir Arthur Haslerig, for his damages; and 2,000*l.* more, to be paid to James Rusell, Edward Winslow, William Molins, and Arthur Squib, esqrs. four of the commissioners for compounding; that is to say, to each of them 500*l.* for their damages. That lieutenant colonel John Lilburne be banished out of England, Scotland, and Ireland, and the islands and territories thereunto belonging; and not to return into any of them, upon pain of being proceeded against as a Felon, and in case of such return, shall suffer death according: That lieutenant colonel John Lilburne do depart out of England, Scotland, and Ireland, and the islands and territories thereof, within 30 days now next coming; and in case the said John Lilburne shall, after the said 30 days, be found within England, Scotland, or Ireland, or the islands and territories thereunto belonging, or any of them, the said lieutenant colonel John Lilburne shall be proceeded against as a Felon, and shall suffer the pains of death accord-

\* “In July this year, 1653, lieutenant colonel John Lilburne, who had been banished by the Rump Parliament, returned, and threw himself upon Cromwell, who left him to the law, upon which he was committed to Newgate and tried the next sessions at the Old Bailey, where he refused to plead unless he had a copy of his Indictment, which was at length granted, and then he put off his pleading by several evasions till the next session, when his Trial came on, and he was acquitted by the Jury, having rendered himself popular among the Malecontents of all the parties, by opposing all governments that were in being in his time. There is something remarkable in this man's story: Oliver seemed very much offended with him, and very desirous that he might be punished, yet privately paid him a pension equivalent with a Lieutenant-colonel's pay, and the Malecontents of all parties opening themselves freely to Lilburne, who was looked upon as a confessor for their cause or causes, Cromwell found his account in keeping in with him, though to conceal the matter the better, Lilburne was content to lie some time in the Tower.” ‡ Oldmixon, 419. But he gives no authority, only putting in the margin, MS.

In 1 Thurloe's State Papers, 366, is an intercepted Letter, dated London, July 21, 1653, addressed to Mr. Edwards, and signed Peter Richardson, containing the following passage: “The last week, John Lilburne was five times at his Trial at the Sessions House, where he most courageously defended himself from Mr. Steel, the Recorder, his violent assaults, with his old buckler, Magna Charta; so that they have let him alone, although he be not yet acquitted. Cromwell thought this fellow so considerable, that during the time of his Trial he kept three regiments continually in arms about St. James's. There were many tickets thrown about with these words:

“And what, shall then honest John Lilburne die!

“Threescore thousand will know the reason why.”

Lilburne encountered Prideaux with so many opprobrious terms, that he caused him absolutely to quit the field. Titus was one of Lilburne's accusers, and the duke of Duckingham's name is much used therein.”

† Pamphlets of reciprocal accusation were published at the time on the part of Lilburne and Haslerig.

ingly: That the Serjeant at Arms attending the Parliament, do apprehend the said lieut. col. John Lilburne, and bring him to the bar of this house, upon Tuesday morning next, to receive the judgment of Parliament aforesaid, and that Mr. Speaker do direct a warrant to the Serjeant at Arms accordingly."

But being myself at the Parliament-door when these Votes past, and understanding what they had done, although they sate (to my remembrance) a good while after candle-light, I staid; and when the Serjeant at Arms came forth with his mace, and the Speaker, I spoke to him in these words, or to this effect: Mr. Serjeant, I understand the house hath this day passed some Votes against me, in which regard I staid on purpose, to see if you have any thing to say to me. Unto which he replied, No, Sir, I have no warrant yet to meddle with you, and therefore you may go whither you please. Well, Sir, if you have none to-night, I will promise you, to wait upon you to-morrow morning, to see whether then you will have any or no. And being as good as my word, the next day being Friday, January 16th, he committed me to the custody of his Deputy, Mr. Parsons, where I remained till Tuesday morning next (as it was ordered in the last Vote) which was January 20th; and coming to the Parliament-door, I was ushered into the bar by the Serjeant at Arms, having his mace upon his shoulder; where Mr. Speaker, as the mouth of the house, expressed himself in these words, or to this effect:

"Lieut. Col. Lilburne, you are commanded by this house to kneel:" unto which I answered in these words, or to this effect: Sir, with all submission to this honourable house, I desire first a little liberty to speak. No, Sir, said he, you are not permitted to speak at all, but commanded to kneel. Well then, Sir, said I, with all submission, I stoop unto your sentence, that you have already past upon me, but I cannot kneel.

Lieut. Col. Lilburne, said he, the house commands you to kneel. Well then, Sir, said I, to be short with you, I neither can kneel, nor will I kneel. Withdraw then, said he; which I did accordingly, making them two or three congées at my going out, the which also I did as I came in. Whereupon, as I was informed, seeing that I would not kneel at their bar to receive my sentence, they voted to draw up an act of parliament to banish me; and passed another Vote by way of punishment, to take off 10 days of the time they had formerly given me to depart the land in. Although upon the Friday at night before, I with my keeper went to the Serjeant's house, and-spoke to him to this purpose: Mr. Serjeant, I understand the parliament sits to-morrow, to chuse the commissioners for regulating the law, and I know it is their usual manner to command all men that come to their bar, that they look upon as delinquents or offenders, to receive their sentence at their bar kneeling. And truly, Sir, I have no desire at all to affront them,

or to vex them more than they are, for I believe they are vexed enough already at me. And therefore I beseech you, oblige me so far unto you, as to tell the Speaker and some other members, whom you please, from me, That when upon Tuesday I shall come to their bar, to receive their sentence, I shall not kneel, although they should order you with your mace at their bar to knock my brains out: and, Sir, if you please to give me leave, I will render you my reason, and it is this: I know when any kneels at your bar to receive a sentence, the parliament looks upon that action or gesture of kneeling, as a demonstration of a man's own conviction in his own conscience that he is guilty, and thereby does deserve such a punishment as by that sentence is past upon him; the which if I should do, I were in my own understanding the veriest rogue in the world, because my conscience and soul tells me, that I have done no evil, nor broke none of the Parliament's laws, but followed, as by the laws of England I may justifiably do, an honest, just and righteous business, in a just and honest way, without using any base or wicked ungodly means to effect my design in it. And whatever Mr. Hill hath reported to the house, I am sure of it, we have fully proved every clause and circumstance contained in our Petition, save only that clause of sir Arthur Haslerig's private corresponding with some of the commissioners of Haberdashers-hall. But if we had not proved the Petition, there is no law extant in England to enable the parliament in the next to pass such a sentence upon me: and therefore for me in words, actions, or gesture, to do the least circumstance, to make the parliament believe that I in mine own conscience was convinced that they had passed a just sentence upon me: I had rather, Mr. Serjeant, be cut in ten thousand pieces, than be such a rogue and traitor to mine own liberties and the nation's; and therefore I beg of you beforehand to tell them as much from me, that so they may avoid, if they please, their forcing me on Tuesday next to affront them.—And he afterwards assured me, that the next day, being Saturday, he told 20 or 30 of the members of parliament of it; so that they put the affront upon themselves, and not I. But upon the said Tuesday, after that I was withdrawn out of the house, and set at liberty to be gone as soon as I pleased, there being great store of citizens, my very good friends, at the door, who were persons that had always faithfully adhered to the Parliament's cause, with a Petition for the revoking of my banishment; the Petition being called for in, was read and debated, but laid aside, without giving any answer to the Petitioners. The copy of which Petition, as since it is printed in England, thus followeth:

To the supreme Authority, the Parliament of the Commonwealth of England; The Humble PETITION of many well-affected People, inhabiting the City of London, Westminster, Southwark, and parts adjacent, in be-

half of the just Liberties of the free People of England, highly concerned in the Sentence against Lieut.-Col. John Lilburne\*.

"Humbly sheweth; That if the manifold services, and extreme sufferings of lieut.-col. John Lilburne, in opposition to tyranny and oppression, and how instrumental he hath been in the removal of divers sorts of oppressors, his wonderful deliverances, and clear acquittments by legal trials, from all former accusations, without the least stain to his reputation; if all these could be forgotten, and that he stood in our thoughts, but as the meanest of well-affected persons (and such at the least we must allow him, having in all times adhered to parliaments), yet in your late proceedings towards him, and heavy censure upon him, we apprehend our native rights so much concerned, that we never conceived a greater cause of speedy application to you for redress, than upon this sad occasion.

"For certainly it cannot be denied, but if he be really an offender, he is such by the breach of some law, made and published before the fact, and ought by due process of law, and verdict of 12 men, to be thereof convict, and found guilty of such crime; unto which the law also hath prescribed such a punishment agreeable to that our fundamental liberty; which enjoineth that no freeman of England should be adjudged of life, limb, liberty, or estate, but by Juries; a freedom which parliaments in all ages contended to preserve from violation; as the birthright and chief inheritance of the people, as may appear most remarkably in the Petition of Right, which you have stiled that most excellent law.

"And therefore we trust upon second thoughts, being the parliament of England, you will be so far from bereaving us, who have never forfeited our right, of this our native right, and why of Trials by Juries, (for what is done unto any one, may be done unto every one), that you will preserve them entire to us, and to posterity, from the encroachments of any that would innovate upon them. And if the original of the unhappy differences between sir Arthur Haslerig and Mr. Lilburne be duly weighed (being as we are informed), it will appear, that sir Arthur's stoppage of monies due to Mr. Lilburne, without legal process, was the first occasion thereof.

"And it is believed, that if Mr. Primate's cause (wherein sir Arthur and Mr. Lilburne have been engaged) had at any time either at first or last been admitted to a trial at law, and had passed any way by verdict of twelve sworn men: all the trouble and inconveniences arising thereupon had been prevented: the way of determination by major votes of com-

mittees, being neither so certain nor so satisfactory in any case as by way of Juries, the benefit of challenges and exceptions, and unanimous consent, being all essential privileges in the latter; whereas committees are tied to no such rules, but are at liberty to be present or absent at pleasure. Besides, Juries being birthright, and the other but new and temporary, men do not, nor, as we humbly conceive, ever will acquiesce in the one as in the other; from whence it is not altogether so much to be wondered at, if upon dissatisfactions, there have been such frequent printing of men's cases, and dealings of Committees, as there have been; and such harsh and inordinate heats and expressions between parties interested, such sudden and importunate appeals to your authority, being indeed all alike out of the true English road, and leading into nothing but trouble and perplexity, breeding hatred and animities between worthy families, affronts and disgust between persons of the same public affection and interest, and to the rejoicing of none but public adversaries. All which, and many more inconveniences, can only be avoided, by referring all such cases to the usual Trials and final determinations of law.

"And whereas you have censured Mr. Lilburne 7,000*l.* fine, and to perpetual banishment, and to die as a felon if he return; we are exceedingly afflicted in our spirits thereby, not only because he hath not had the usual way of Trial by Jury, which yet weighs very much with us; nor for that we believe he hath followed Mr. Primate's cause, out of strong persuasion of the justness thereof (the cause in itself, as we have been informed, being very intricate and hard to be understood, and so did not wilfully or intentionally carry it out against his conscience, some of the Commissioners wishing to God it had therefore never came before them), nor for that we believe him innocent of any wilful breach of parliament privilege, in delivering printed Petitions, before the original was presented unto you [that being never before published, to be a breach], though all these add to our grief, yet the main of our affliction ariseth from the destructiveness of the sentence, as being therein contrary to that other our fundamental native right, which enjoins, That fines should have regard to the qualities of the persons; a plowman saving his wainage, and a merchant his merchandise. Whereas this, if relating to his estate, we believe, is so far from preserving him in his quality, as that it leaves himself, his wife, and his children, without sustenance; if in relation to his person, his affection to parliaments, and zeal to public freedom, renders all foreign nations so unsafe to him, as that in effect he is banished into a wilderness, and exposed naked to the fury of bears and lions.

"The premises duly weighed, and for that (as we are informed) the parties accused and censured have had no means to see what report hath been made by the honourable Committee, nor have had the liberty of exceptions

\* This Petition shewing the esteem and veneration Lilburne was in among the people, and the sentiments those times had of this Case, and the value they set on Trials by Juries: as the birthright of Englishmen; is the reason it is here inserted.



thereunto, in like cases granted; and in that many well-affected people that heard the debates, and evidences on both sides, are unsatisfied, both in point of possession, and title to the colliery in question; that the honour of parliament may stand immaculate, our native, fundamental rights inviolable, and all those gentlemen concerned in this cause left without any the least grudging, or just complaints;

"We have deemed ourselves bound in conscience in most humble manner to intreat, 1. That you will be pleased to recal your forementioned grievous Sentence upon lieutenant-col. John Lilburne, and the rest concerned therein. 2. To give free liberty to Mr. Primate to prosecute his cause, both for title and possession at the common law; and therein to make use of what counsel he shall think fit. 3. That sir Arthur Haslerig be referred to take his course at law, for whatsoever injuries conceived to be done unto him by lieutenant-col. John Lilburne, or any others, as was granted in Mr. Musgrave's case with the said sir Arthur; and that Mr. Lilburne, or any others, may have the same liberty against sir Arthur, if they conceive any cause."

After which, the said friends of mine drew up another, as they hoped, much more effectual than that foregoing. And upon the Tuesday after, being January the 27th, went up with it to the Parliament-house, but could not that day get it read. Upon which I that night supped with about 200 of them, at an house behind the Exchange in London; and the next morning went to the Speaker of the parliament, and told him, that on the morrow, being Thursday, I intended, by God's assistance, to take my journey for beyond sea, and therefore intreated him to give me his pass; but he told me he durst not for his hanging give me a pass. Unto which I replied; Sir, that is very strange, that your house will command me, upon pain of death, to leave England by such a day, [which I am willing to do] and yet you will not enable me by your pass to be gone. For want of which, it is very probable, when I come at the sea-side, your officers of the Custom-house will stop me: and yet, because I am not gone out of England before such a day, I must be hanged. What is this else, but to lay a snare for my life? For you command me upon pain of death to be gone, and yet you will not give me your pass to enable me to go, although it be almost impossible without it for me to get away. Well, said the Speaker, I dare not for my life give it you. So I was forced to depart without it. And the next morning, being Thursday, January 29th, I took horse at Finsbury-stables, by Moor-fields, and rid through London and Southwark, being accompanied with great store of my friends on horse-back, who brought me divers miles on my journey. And the next day I came to Dover.

And being forced at Dover to make use of the parliament's printed Votes about my Ba-

nishment, for my pass, I was by the officers let go, and in a few hours time I arrived safe at Ostend; and upon the 8th of February last arrived (by God's blessing) at Amsterdam, the place of my desired rest and abode, where, within a few days after, I found a printed Act of Parliament, which thus followeth:

*An Act for the Execution of a Judgment given in Parliament against Lieut.-Col. John Lilburne.*

"Whereas, upon the 15th day of January, in the year of our Lord 1651, a Judgment was given in parliament against the said lieutenant-col. John Lilburne, for high crimes and misdemeanors by him committed, relating to a false, malicious, and scandalous Petition heretofore presented to the parliament, by one Josiah Primate, of London, Leatherseller, as by the due proceedings had upon the said Petition, and the Judgment thereupon given at large appeareth: Be it therefore enacted by this present parliament, and by the authority of the same, That the fine of 3,000*l.* imposed upon the said John Lilburne, to the use of the Commonwealth, by the Judgment aforesaid, shall be forthwith levied by due process of law, to the use of the Commonwealth accordingly. And be it further enacted, That the sum of 2,000*l.* imposed by the said Judgment upon the said John Lilburne, to be paid to sir Arthur Haslerig for damages, and the sum of 2,000*l.* likewise imposed by the said Judgment upon the said John Lilburne, to be paid to James Russel, Edward Winslow, William Molins, and Arthur Squib, in the said Judgment named; that is to say, to each of them 500*l.* for their damages, shall be forthwith paid accordingly: And that the said sir Arthur Haslerig, James Russel, Edward Winslow, William Molins, and Arthur Squib, their executors and administrators, shall have the like remedy and proceedings at law respectively against the said John Lilburne, his heirs, executors, administrators, and assigns, for the recovery of the respective sums so given to them by the said Judgment, as if the said respective sums had been due by several recognizances in the nature of a statute staple, acknowledged unto them severally by the said John Lilburne, upon the said 15th day of January, in the year of our Lord 1651. And be it likewise enacted by the authority aforesaid, That the said John Lilburne shall, within twenty days, to be accounted from the said 15th day of January, 1651, depart out of England, Scotland, Ireland, and the islands, territories, and dominions thereof: And in case the said John Lilburne, at any time after the expiration of the said twenty days, to be accounted as aforesaid, shall be found, or shall be remaining within England, Scotland, Ireland, or within any of the islands, territories, or dominions thereof; the said John Lilburne shall be, and is hereby adjudged a felon, and shall be executed as a felon, without benefit of clergy. And it is lastly enacted, by the authority aforesaid, That all, and every person and persons, who shall, after the expira-

tion of the said twenty days, wittingly relieve, harbour, or conceal the said John Lilburne, he being in England, Scotland, or Ireland, or any the territories, islands, or dominions thereof, shall be hereby adjudged necessary of felony after the fact. And all judges, justices, mayors, bailiffs, sheriffs, and all other officers, as well military as civil, in their respective places, are hereby required to be aiding and assisting in apprehending the said John Lilburne, and in putting this act in due execution."

Friday, the 30th of January, 1651, Ordered by the parliament, "That this Act be forthwith printed and published.

HENRY SCOBELL, *Cler. Parl.*"

But the said John Lilburne returning to his native country in June, 1653, was apprehended, and committed to Newgate, as appears by the following Mitimus:

*The (illegal) Mitimus of the Lord Mayor.*

"Whereas it was enacted by a late act of parliament, (entitled, 'An act for the execution of a Judgment given in Parliament against lieut. col. John Lilburne,') That the said John Lilburne should, within 20 days, to be accounted from the 15th day of January, 1651, depart out of England, Scotland, Ireland, and the islands, territories, and dominions thereof: And that in case the said John Lilburne, at any time after the expiration of the said 20 days, to be accounted as aforesaid, should be found, or should be remaining within England, Scotland, Ireland, or within any of the islands, territories, or dominions thereof; the said John Lilburne is hereby adjudged a felon, and to be executed as a felon, as in the said act was mentioned: And whereas the said John Lilburne hath been remaining, and found since the expiration of the said 20 days, within the liberties of the city of London, in the Commonwealth of England, contrary to the said act: These are therefore, in the name of the Keepers of the Liberties of England, by authority of Parliament, to will and require you forthwith, upon receipt hereof, to receive into your custody the body of the said John Lilburne, whom I send unto you herewith for the felony aforesaid, and him safely to keep, until he shall be delivered by due course of law; and this shall be your Warrant. Given under my hand and seal, dated this 16th day of June, in the year of our Lord, 1653. JOHN FOWK, Mayor."

To the Keepers of the Gaol of Newgate.

Before the sessions began, John Lilburne petitioned the Parliament, but they taking no notice of his Petition, he was brought to his Trial, July 13th, as follows:

The Keepers of the Liberties of England, by Authority of Parliament, against John Lilburne, now Prisoner at the bar.

Mr. Lilburne was brought to the bar upon Wednesday the 13th of July, where, after silence being made in the court, the clerk com-

manded him to hold up his hand at the bar: Mr. Lilburne applying his speech to the lord chief baron Wylde, desired his honour to explain what was meant by holding up the hand at the bar, that so by doing that act, ceremony, or form, he might not run himself into snares and dangers. And after a large dispute betwixt the court and him upon that point he saith, 'Then my lord, my name I must acknowledge to be John Lilburne, gent. son of Richard Lilburne of Thackley-Punchardon, in the county of Durham, esq. and I am here ready to answer any thing any man hath to lay to my charge.' And the Indictment being read, Mr. Lee, the clerk of the Court, demanded of him, whether he was Guilty, or Not Guilty? But Mr. Lilburne, the prisoner at the bar, applied himself to the Court, and said, 'My lord chief baron Wylde, I humbly desire as my right by law, to speak freely against the insudiciency and illegality of the Indictment, before I join issue to it.' Which being (with a little struggling) granted him, he said, 'Well then, my lord, now is the time, or never, for me to assign my errors against the Indictment, before I plead to it: For if once I should plead to it, it will then be too late to assign the errors; but if I do it before, then of right and justice you ought to grant me a copy of my Indictment, and assign me learned counsel in the law to consult with, and a convenient time to return in my Answer unto the said Indictment: All which,' (said the Prisoner) 'is fully declared for good law by the lord Coke, in his 3rd Institute, fol. 29, 34, 137, 230, which book was published by two special Orders of the House of Commons in their virginity and purity, in anno 1641, and 1642, for 'good law.' The pregnant and pertinent passages of which places were distinctly read by the prisoner at the bar, and pressed with all the earnestness and reason he possibly could to enjoy the benefit thereof. And to the apprehension of the prisoner, and multitudes of the by-standers, the Court expressly ordered, that he should have Counsel assigned, and the Copy of the Indictment; but withal, he was ordered under his hand to send in his Exceptions: Upon which the prisoner was carried into the garden, on the backside of the Court, to draw them up; where, having remained some space, during the dining of the Court, he writ a Letter, the copy of which thus followeth:

For the right hon. the Lord Chief Baron Wylde, and the rest of the Honourable Bench, these humbly present:

"My lord, and the honourable bench; Since I departed the Court, I have seriously considered, that I cannot legally make any Exceptions concerning the errors in the Indictment, without a true copy thereof, to compare with the Act against lieut. col. John Lilburne, and therefore I humbly pray, that you would be pleased so far to do me that right in point of life, that I may have a true Copy thereof, and I shall speedily present my Exceptions under my

head, and thankfully remain, your lordship's most humble servant, JOHN LILBURNE."

Which Letter being delivered by one of the officers, as the judge was at dinner; as soon as the Court sat again, the prisoner, contrary to his expectation, was called to the bar again, and Mr. Lee, the clerk of the Court, pressed very hard to him to plead to the Indictment, Guilty, or Not Guilty; but the prisoner at the bar applying himself to the lord chief baron Wylde, very much wondered why he should be called to the bar any more, before he had enjoyed the benefit of their own order, for a Copy of his Indictment, and the assignation of learned counsel in the law to consult with. Judge Warburton with some heat falls upon the prisoner, and undervalues the works of that learned man in the law of England, sir Edward Coke, and the parliament's Orders, that had caused his second, third, and fourth Part of his Institutes to be printed; and highly extols the absoluteness of parliaments. Upon which the prisoner at the bar replies with a great deal of zeal, earnestness, reason, understanding, and length of time. And after a long and tedious struggling, he could obtain no more that night, but a lame Order to have counsel assigned him only to one individual point. And taking out the Order by his friends the next morning, being Thursday, July 14, 1653, he sent a Letter to the Court, the true copy of which thus followeth:

For the right hon. the Lord Chief Baron Wylde, and the rest of the Honourable Bench, for the Goal Delivery of the Old Bailey.

"My Lord; Vouchsafe me liberty to acquaint you, that immediately upon my getting to my lodging in Newgate, I dispatched away this bearer, Mr. Overton, with another friend, to the Court for their Order, which was given unto them; and by it Mr. Serjeant Glynn, Mr. Serjeant Earl, Mr. Maynard, Mr. Hales, Mr. Twisden, Mr. Wylde, Mr. Chute, and Mr. Norbury, should be assigned of counsel with John Lilburne, gentleman, to advise with him, whether he shall insist upon his plea and law, or whether he be the same John Lilburne named in the Act, or not, before ten of the clock to-morrow in the forenoon. Sir, the parties who took the order, posted away to seek the counsel, and spent several hours, but could find none of them but Mr. Maynard, who was sick; and Mr. Chute, who was just a going out of town: And besides, my lord, give me leave to acquaint your honour, that in a private way, I have got the opinion of some well versed in the law, and really, my lord, when they read the Order of the Court, and are told, that I cannot get a copy of the Indictment, they stand amazed at it, and know not what to advise: Therefore seeing that really and in seriousness I have done the utmost to get the advice of Counsel according to the said Order, and cannot obtain it to any purpose; neither can those that are willing privately to help me, do me any good (as they say), for want of the

VOL. V.

copy of the Indictment, which they say in law and reason ought not to be denied to me; therefore I humbly continue my suit to your honour, and the honourable bench, that you would not require impossibilities from me, that am no lawyer, in an absolute unprecedented case, wherein I have no footsteps at all to tread in, or any other guide to walk by, but only the natural reason of an ignorant and illiterate man in the practice part of the law of England. And therefore do most humbly pray and beseech your honour, and the honourable bench, as you are Christians, and men of honour and conscience, to afford me a Copy of my Indictment, and time till the next Sessions, to consult with the counsel that you have assigned me: for which favour and justice, I shall be very much obliged to remain, Yours in sincerity and heartiness to serve you, JOHN LILBURNE."

"Newgate, July 14, 1653."

But for all the aforesaid Letter, he was called to the bar upon Thursday in the forenoon, where he again struggled very earnestly for a Copy of his Indictment, as his right by law; and the Lord Chief-Baron Wylde sitting upon the bench, the Recorder and the Prisoner had a long and hot encounter each with other: and about 2 o'clock in the afternoon the Prisoner was dismissed, with a promise of the Copy of his Indictment, being thereupon ordered to bring in his exceptions by 2 o'clock the next day in the afternoon: but the Prisoner, several hours after his dismissal, apprehending himself wronged with those delays or denials (of right and justice), that were put upon him, writ a third Letter, the Copy of which thus followeth:

For the right hon. the Lord Chief Baron Wylde, and the honourable the Court of Goal Delivery, sitting in the Old Bailey, these humbly with speed present.

My Lord; I stand amazed when I am denied a Copy of my Indictment, which I apprehended the Court granted me at the Bar as my right; I did therefore send my father and father-in-law, with my brother-in-law, and my cousin-german, humbly to desire it as my right, but they returned me your denial of it; in which regard, in all humility, though much of my time be expired, I have by these few lines once again sent my father and brother to wait upon you for a copy of it (to leave you without excuse), which is my absolute right by law; and do therefore humbly intreat you it may be sent to me presently, without which I am not bound in law to draw up a plea, nor cannot. But if I must be murdered and destroyed without law, my innocent blood be upon the heads of those that shall be guilty of it, by will to take it from me. So humbly craving your lordship's legal, speedy, and just answer, I rest Your Lordship's most humble Servant, so far as you are a maintainer of the people of England's fundamental Laws and Liberties, JOHN LILBURNE. Thursday, July 14, 1653. Past o'clock at night."

2 B

But receiving no benefit by the said Letter, the next morning, being Friday, his father went to the lord chief-baron's chamber; but he being preparing to go out of town, he could not be permitted to speak with him. After which, the old gentleman came back to the Old Bailey, to complain of his son's hard usage; and from them with a messenger went back again to the Lord Chief Baron's Chamber, and from thence to Attorney General Prideaux's Chamber, to get a Warrant from him to enjoy the Copy of the Indictment: and then coming to the Court again, about ten of the clock he received it from the hand of Mrs Lee; the Copy whereof thus followeth:

At the Sessions of Peace held for the City of London, at Justice Hall in the Old Bailey; now sitting, this present 16th day of July, 1653.

*London, ss.* The Jurors for the keepers of the Liberty of England, by authority of parliament, upon their Oaths do present, that in, and by a statute made in the parliament of this Commonwealth of England, holden at Westminster, in the county of Middlesex, the 30th of January, in the year of our Lord, 1651, intitled An Act for the execution of a judgment given in parliament against lieut. col. John Lilburne; it was enacted by the said parliament, and by the authority of the same, that the said John Lilburne should (within 20 days, to be accounted from the 15th day of January, 1651) depart out of England, Scotland, Ireland, and the islands, territories and dominions thereof. And in case the said John Lilburne, at any time after the expiration of the said 20 days, to be accounted as aforesaid, should be found, or should be remaining within England, Scotland, Ireland, or within any of the islands, territories or dominions thereof, the said John Lilburne should be, and was thereby adjudged a felon, and should be executed as a felon without benefit of clergy. And it was also enacted by the authority aforesaid, that all and every person and persons, who should, after the expiration of the said 20 days, wittingly relieve, harbour, or conceal the said John Lilburne, he being in England, Scotland, or Ireland, or any the territories, islands, or dominions thereof, should be thereby adjudged accessory of felony after the fact. And all judges, justices, mayors, bailiffs, sheriffs, and all other officers, as well military as civil, in their respective places, are thereby required to be aiding and assisting in apprehending the said John Lilburne, and in putting the said Act in due execution, as in and by the said Act of Parliament appeareth. And that the said John Lilburne, late of London, gentleman, the statute aforesaid not weighing, nor the punishments therein contained any whit fearing, after the expiration of the said 20 days, to be accounted from the said 15th day of January, 1651, as aforesaid, to-wit, the 15th day of June, in the year of our Lord, 1653, was found, and was feloniously remaining within England aforesaid;

that is to say, at London, to-wit, in the parish of Giles without Cripplegate, in the ward of Cripplegate, London aforesaid, against the form of the statute aforesaid, and against the public peace, &c. **SADLER."**

And bringing it to his son, who, with the best counsel that he had, reading it, his work was all of-new to begin again; so that he was forced first to post away his own father and others, to let the Court know, that although it was their order in Court, that he should have had the copy of his Indictment the day before, being Thursday, about two o'clock in the afternoon; yet it was ten o'clock upon Friday forenoon, before he could get it. And at two o'clock in the afternoon upon the said Friday, he was to appear at the bar; and all his work, upon the serious viewing the Indictment, was to begin anew, so that it was impossible that in three or four hours time he could be ready. And therefore his father and Mr. Overton pressed the court to give him time till the next morning, being Saturday the 16th of July, to make his Exceptions ready, and put them in; but it would no ways be granted, nor no longer time than two hours to be added to the former. At the understanding of which, he intreated his father-in-law, and Mr. Thomas Price, to go down to the Court again, and tell them that it was altogether impossible that the prisoner could make his Exceptions ready by four o'clock in the afternoon of the said Friday, it being ten in the forenoon, before he could get the copy of the Indictment; although it was their order, that he should have had it by two o'clock in the afternoon the day before: and therefore they pressed hard at the bar to the Court, to have till the next morning, being Saturday, for the prisoner to bring in his Exceptions; but they also returned with a negative. The prisoner and such as he had at work, followed his papers as for their lives; and about six or seven at night, came the messengers from the court for Mr. Lilburne the prisoner, who being come to the bar, Mr. Lee, the clerk, pressed him again to plead Guilty or Not Guilty to the said indictment; but the prisoner little regarding him, addressed himself to the Lord-Mayor, as the then President of the Court, and gave him an exact narrative of what delays he had had about the getting of the copy of the Indictment; being delayed from two o'clock in the afternoon upon Thursday, till ten o'clock in the forenoon that present Friday: and that as soon as he had got it, he had taken all the pains, and used all the industry, that it was possible to be expected from an ignorant man in the formalities and niceties of the law of England. That he had sent several messengers truly to acquaint the Court, that he could not possibly get the said Exceptions deliberately perfected before the morrow morning, being Saturday. That they were weighty things, and the sailing in one word, might cost him his life. That he was (when Mr. Brisco came for him) but newly begun to read, examine, and compare the ingrossed copy with the original, to see whether there

was any fault in it or no; that he nothing nigh had read over one quarter of it, when he was called away to come to the Court. That he hoped they would not compel him to put in uncorrected Exceptions for his life, especially seeing the mistake of one word might destroy him, and especially seeing procrastination of time was no part of his fault, but the Court's only and solely, who had causelessly spent so much time, before they would give him that, the copy of his Indictment, which was in *Law* (he having already made his verbal Exceptions) so essentially and legally his right, and without which he neither was bound, nor could make legally and formerly in law his Exceptions against the Indictment read unto him in Court. And therefore humbly prayed, that he might enjoy the honourable Court's favour till to-morrow morning, to make them ready, and put them in: which being granted, he the prisoner departed to his lodging, and posted away to several of his counsel, some of which coming to him that night, he had a large discourse with them, and they read much of his papers, and very highly approved of his exceptions; but withal told him, he had fallen far short in demanding his right and due.

So upon Saturday, about eight o'clock in the forenoon, he was brought to the bar again, and he was pressed again by Mr. Lee, to plead, Guilty, or Not Guilty, to the Indictment.

But Mr. Lilburne, the prisoner at the bar, regarded not him, but addressed himself to the Lord-Mayor and the Court, acquainting them where they left off the last night; and that in obedience to their commands, he had brought in his Exceptions against the sufficiency of the Indictment read unto him in the Court, fairly ingrossed in parchment according to law, and humbly prayed that it might be accepted, recorded and read: so handing it into the Court, the Recorder, Mr. Steele, took it in his hand, looked upon it, and said, Mr. Lilburne, this is not under your counsel's hands.

*Lilburne.* No, Sir, it is not, I am sure some of them tell me it needs not; but it is under my own hand, and I must and will justify, and make good those Exceptions with my life.

*Recorder.* Wherefore did we assign counsel? One cause was, that they might sign your Exceptions.

*Lilburne.* My lord, with your favour thus; be pleased to take notice, that in your assigning me counsel, you have only done it to one individual point; which is not only a snare to me, but also to my counsel. First, To me, in cooping me up to one Plea for my life; whereas the insufficiency of the Indictment, and the illegal, contradictory things upon which it is grounded, and my right in law, leaves me sufficiently at elbow-room to have plurality of Pleas or Exceptions: and therefore in your assigning me counsel in one point only; if they should set their hands to any more but that one point alone, they tell me, they run themselves into snares and dangers. But, my lord, they likewise tell me, if you, and this honourable

Court, please to assign them of my counsel at large, they will not only sign my Exceptions, but will venture their All at the bar of justice to maintain them to be good law. And not only so, but they tell me, and bid me tell the Court, if I pleased, that if they have any understanding in the law, and that their law-books speak truth, they are very confident that all the judges and lawyers in England, put together in one, shall never be able, while they breathe, to draw up a legal Indictment upon the act of banishment of the 30th of January, 1651, and the Votes or Judgment (as it is called) of the 15th of January, 1651, upon which it is grounded, if these printed copies of them be true copies; because, my lord, they say, a judgment, and the execution of a judgment, ought to be like a pair of indentures exactly even in all things, the one neither to be above nor below the other, but even with it in all circumstances; but in the pretended Judgment, and the Act for execution thereof, there are these three essential differences:

First, The Judgment (as it is called) saith, *lieut. col. John Lilburne shall be banished and depart out of England, within 30 days next after the said 15th of January, 1651; but the act for executing the said Judgment, expressly saith, he shall not stay in England above 20 days next after the said 15th day of January, 1651: So that, my lord, here is ten days difference betwixt the Judgment itself, and the Act for the pretended execution thereof; which makes an essential nullity in it, and all proceedings that are founded upon it.*

Secondly, The pretended Judgment banisheth one *lieut.-col. John Lilburne* out of England, Scotland, and Ireland, and the islands and territories thereunto belonging, but banisheth him not in the least out of their dominions; so that Wales being styled, distinguished, and denominated in law to be a dominion, the said banished *lieut.-col. John Lilburne*, by any words contained in the said banishing Votes or Judgment, might legally and securely have lived in Wales all his days. But then comes the said Act of January 30th, 1651, which is called an Act for the execution of the said Judgment of the 15th of January, 1651, given in Parliament against *lieut. col. John Lilburne*, and it banisheth the said *lieut.-col. out of England, Scotland, Ireland, and the islands, territories and dominions thereof: so that here is a main essential difference betwixt the pretended Judgment, and the Act for the execution thereof.*

The third difference betwixt them is this; the pretended Judgment of the 15th January, 1651, saith, That if the said banished *lieut.-col. John Lilburne* shall return into England, &c. at any time after the expiration of the said 30 days, he shall be proceeded against as a felon, and shall suffer death accordingly. But the said pretended Act of the 30th January, 1651, made on pretence for the execution thereof, expressly saith, by way of addition, that if the said *lieut.-col. John Lilburne* shall return into England, &c. after his banishment, he shall be, and i.

hereby adjudged a felon, and shall be executed as a felon, without benefit of clergy; so that, my lord, they say it is impossible to draw up a legal Indictment upon the fore-mentioned contradicting Act, Votes, or pretended Judgment.

*Recorder.* Well then, Mr. Lilburne, seeing your counsel are so willing, as you say they are, to sign your Exceptions for good law, the Court will give you time till six of the clock at night, to get their hands to it, and will assign you counsel at large.

*Lilburne.* My lord, I am put upon a great streight. 1. In that the sessions are holden a week after they should usually have been held; by means of which length of time, most of the great and chiefest, able, and most learned counsel of England are gone out of town. 2. Your honour and the Court hath exhausted and spent from Wednesday morning till this hour, before you would fully grant me that which is my absolute right by law; by means of which delay of time, I am afraid, I have by this lost all my counsel, that you have assigned me, that I can fully rest upon, that were in town, when I named them for my counsel, and whom, if you pleased to have ordered it so, I could have often conferred with since, though now truly, I am afraid they are all gone out of town upon the Circuit; and if they be, is it possible that I should get their hands to my Exceptions by six o'clock? And therefore that we may delay no longer time in this Trial, I beseech you, without any more ado, accept of my own Exceptions under my own hand: I am sure I am the most concerned in them, and my life must pay for the faults in them, if there be any. And therefore I pray accept of them without any more ado, under my own hand alone: I am sure my counsel tell me, you ought in law to do it.

*Recorder.* Well, Mr. Lilburne, in short, the Court tells you they cannot in law, nor will not accept of them, without your counsel sign them.

*Lilburne.* Really, Mr. Recorder, you drive me to very great streights, in delaying me so long my right by law, before you will fully grant it me: it is an apparent hazard, and a very great probability my counsel are already gone out of town: and then after you have so delayed me, to tie me up to an unnecessary and unrequired in law punctilio, for me to get my counsel's hands to my Exceptions in so short a time, when in probability it is impossible it shall or can be done.

Besides, my Lord Mayor, consider of the inconvenience that Mr. Recorder would tie me to, which is this; I stand here to plead for my life, and I am commanded to put in my Exceptions against the illegality of an Indictment read unto me, and it may be, it is evidently seen, known, or at least believed, that I have several of the now present greatest men in England for my grand and chiefest adversaries; and therefore to tie me up in my case at all, to bring in any thing under my counsel's hands, is a snare and danger to me: for we all know by experience, my lord, how easy it is for the great

men in power, right or wrong, to crush and destroy any man that they in good earnest set themselves against; and it is apparent their indignation is heated seven-fold against me (but I must avow it, without any the least just ground or cause), and it cannot chuse but burn in a very great degree against my counsellors, that shall help me in law to preserve my life, against their enraged and big-swollen malice. And, my lord, I am sure, almost all those counsellors that you have assigned me, are not only men of great estates, but also men of great practice, which is their livelihood; and it is possible my condition, before my trial is done, will compel and necessitate me to speak that high, and yet legal language, that may ruin and destroy my counsel, either to plead it, or set their hands to it: and for me to expect or desire that from them, that shall apparently tend to the ruin and destruction of them and their families, when I am in such a mean, low, and poor condition, as that I am able in no measure in the least to make them any part of amends for that ruin or loss they shall or may sustain, by too deep engaging for my preservation, I were an irrational, unjust, beastly man to do it. My lord, it is my person at present now at the bar, that is in hazard and jeopardy, and none else. And, my lord, I am long since robbed of all my estate, by the tyrannical will and arbitrary pleasure of sir Arthur Haslewig; and have long since nothing left to buy me bread, but what I borrow. And, my lord, I have now nothing to lose but my wife and tender babes, and my skin; and to die to me is gain, so I be not *felo de se*, a murderer of myself; and, therefore, I beseech you, my lord, let me put in my Exceptions under my own hand.

*Recorder.* Mr. Lilburne, if you be so earnest thus to do, wherefore do you so much press for counsel learned in the law to be assigned you?

*Lilburne.* I will tell you presently, my lord; in the Italian history of a nobleman of Italy, and otherwise, I have read and heard of Gustavus Adolphus, that valiant and wise late king of Sweden; that although he was a most expert soldier, yet in all difficulty and knotty enterprizes that he did endeavour to undertake, he would call all his able, discreet and understanding officers together. And because, as Solomon saith, two is better than one, and a three fold-cord is not easily broken; he would advise and consult with them all: But yet, being he was; and did apprehend himself most concerned, and had the far greatest stock to adventure in the affair he went about, he would not absolutely be tied up in every punctilio to their advice; but being a very wise, righteous, just, and withal valiant man, it is therefore said of him, when he had heard with mature deliberation all their advices, he would after that, with a serious consultation with his own reason and understanding, draw his own inferences and conclusions, and with mettle and gallantry put them only in execution. Even so, my lord, my life being at stake, although I have a little competency of

understanding, and mettle enough to execute a thing; yet being I am ignorant of the punctilios, formalities or practice part of the law; and being that the Scripture saith, 'Woe to him that is alone, for two is better than one, and a three-fold cord is not easily broken;' on these considerations I am desirous to consult with learned counsel in the law, especially since it is my right by law so to do. But I do assure you, my lord, seeing God hath endowed me with a good proportion of judgment and understanding to discern of things, and seeing my adventure is abundantly the greatest, I will not absolutely be tied up to follow my counsel's advice in all things, neither will I do it, unless I like it very well; but in most knotty, difficult and high cases, that is not safe for them too deeply to engage in, for fear of their own ruin, and my absolute inability in any proportionable measure to requite them; I will therefore draw my inference and conclusions from their advice and counsel, and manage them myself in my own way, for the safety and preservation of my own life. And therefore, my lord, I pray you again to accept of my Exceptions under my own hand, without any more ado, that so we may speedily come to some issue of this tedious, jangling business.

*Recorder.* Mr. Lilburne, I tell you again, the Court will not, nor cannot receive your Exceptions without being signed by your counsel; and therefore to enable you to procure their hands, we will give you an order at large, that so you may be fully ready by six o'clock.

*Lilburne.* My lord, I pray deliver the order speedily to my father there in Court, lest it be never so little delayed, my counsel be all gone out of town.

Which being by the court assented unto, the copy of the Order thus followeth.

'London: At the goal-delivery of Newgate, July 16, 1653. Mr. Sergeant Glynne, Mr. Sergeant Earle, Mr. Maynard, Mr. Hale, Mr. Twisden, Mr. Wilde, Mr. Chute, Mr. Norbury, and Mr. Webb, are by this Court assigned of counsel, with John Lilburne, gent. to perfect his plea in law, and deliver the same under the hands of them, or one of them, before six of the clock this day in the afternoon. SADLER.'

Whereupon the Prisoner withdrew to his lodging, and being brought to the bar about six o'clock at night, Mr. Lee, the clerk of the Court, pressed very hard to him, answer and plead to the Indictment, Guilty or Not Guilty; besides whom, stepped up another gentleman in the Court, and he in a mumbling manner prest something, as hard as his slender abilities would enable him. Whereupon Mr. Lilburne demanded to know of the Lord-Mayor, what that newly-come gentleman was, that was so far afraid to speak out his mind, that he could not understand what he said. Whereupon answer was returned, it was Mr. Hall, the attorney of the Dutchy, who was

comethither to be a prosecutor for the State or Commonwealth.

But Mr. Lilburne's chiefest business being with the Court, he accordingly applied himself to the Lord Mayor.

My lord, I desire to give your honour a true and real account of all my transactions, since I was last before you, which is this; You may remember at my being last at the bar, I told you, I did verily believe my counsel were all upon the point of going out of town; in which regard I earnestly intreated you without more delay to deliver your order to my father, that so he might not fall short of getting to my counsel before they were gone; but, my lord, at my departure from the bar, as soon as I came to my lodging, I all on post-haste dispatched my cousin-germans, George and William Lilburne, to Mr. Norbury, who they found just ready to mount on horseback, to be gone out of town, and acquaint him by word of mouth, with the order the Court had made, to assign him my counsel at large: and he was pleased, without any delay, in his riding habit, to hasten to me, and seriously read over my Exceptions, and sign them, and so bid me farewell, and is gone out of town. But, my lord, that which I desire your honour to take notice of, is, That if I had staid till my father came forth of the Court with your Order, I had totally lost Mr. Norbury, and he had absolutely been gone out of town a good while before he could have got to him.

In the second place, having sent my said kinsmen post-haste before to my counsel, as soon as my father came with your Order, I posted him and my brother-in-law away to Mr. Maynard; with whom speaking at his own chamber, they found him sickly and ill, and altogether unfit and unable to come to me, by reason of that little time he had to stay in town, those several things he had to do at his chamber during his staying, and the weakness of his body, and the absolute necessity of his being at a place by a fixed hour, or to run the hazard of losing 600*l.* upon his own score: and if you doubt any thing of this relation, they are here in court to declare the truth of it upon their oaths themselves. But, my lord, though Mr. Maynard could not well come to me, yet he was pleased to stay at his chamber, till my father fetched my papers and Exceptions from me; which, with seriousness reading, he hath also signed them, which I have now in my hand. But, my lords, from both my counsellors, especially Mr. Maynard, I perceive I am very much blamed for my ignorance and folly, in not, when I demanded the Copy of my Indictment, as my right by law, demanding Oyer, or hearing in open court, of the act of parliament, the judgment upon which it is grounded, and the crimes upon which the judgment is grounded; which, I understand from them, should be exemplified under the Great Seal of England, and ought so to be here remaining in Court.

*Recorder* replied, Mr. Lilburne, we know of no such thing, the records of the acts of par-

liament are at Westminster, in the clerk of the parliament's hands, and there you may have them.

*Lilburne.* Good Mr. Recorder, interrupt me not, but let me go on; I say, my counsel tells me, I ought, as my right by law, to have demanded 'Oyer of the said act, judgment and crimes,' and after I had seen them under the broad seal of England, and heard them read in open court, I ought, as my right by law, to have demanded copies of them all three, and they ought not to have been denied me; that so I might have been fully enabled all at once to have returned exceptions at large to the Indictment, the act upon which it is grounded, the judgment upon which the act is grounded, and the crimes, which is the original of all. And if no legal act can be produced, they tell me the Indictment, and all proceedings upon it, are void and null. And they also say, if no legal judgment can be produced, they tell me the act for the execution of it is null, and falls to the ground. And they also say, if no crimes in law can be produced upon which the judgment is legally founded, all is at an end, because what is not good nor sound in its original in law, can never be made so by tract of time; and what is not sound and substantial in its foundation, can never be made so in its fabric or building. But yet, my lord, they say it is not too late for me yet to insist upon the Oyer as my right by law: I confess, my lord, their time would not permit either of them to stay in the town, to draw me up the formal draught of such a claim, much less would it permit them to stay in town till it was engrossed in parchment, that so they might set their hands unto it. But, my lord, according to those legal instructions that I have largely received from my counsel, I have got such a paper formally in law drawn up, and it is here engrossed in parchment, and signed with my own hand. And, my lord, I here tender it unto the court, with two shillings as the clerk's fee, to enter it upon record at his peril. The copy of which Parchment thus followeth:

"At the Sessions of Peace held for the City of London, at Justice-Hall in the Old-Bailey, now sitting this present 16th day of July, 1653.

"The Keepers of the Liberties of England, by Authority of Parliament, against John Lilburne, now Prisoner at the Bar.

"The said John Lilburne, gent. the now prisoner at the bar, supposed to be indicted by that name, brought to the bar, and now appearing in person, having heard the said Indictment read in these words, to wit:

"*London ss.* The jurors for the Keepers of the Liberties of England, by authority of Parliament upon their oaths do present, that in and by a statute made in the parliament of this commonwealth of England, holden at Westminster in the county of Middlesex, the 30th day of January, in the year of our Lord 1651, intituled,

'An Act for the execution of a judgment given in Parliament against lieut. col. John Lilburne;' and it was enacted by the said parliament, and by the authority of the same, that the said John Lilburne should (within 20 days, to be accounted from the 15th day of January, 1651), depart out of England, Scotland, Ireland, and the islands, territories, and dominions thereof. And in case the said John Lilburne, at any time after the expiration of the said 20 days, to be accounted as aforesaid, should be found, or should be remaining within England, Scotland, Ireland, or within any of the islands, territories, or dominions thereof; the said John Lilburne should be, and was thereby adjudged a felon, and should be executed as a felon, without benefit of clergy.

"And it was also enacted by the authority aforesaid, that all and every person and persons, who should, after the expiration of the said 20 days, wittingly relieve, harbour, or conceal the said John Lilburne, he being in England, Scotland, Ireland, or any the territories, islands, or dominions thereof, should be thereby adjudged accessory of felony after the fact. And all judges, justices, mayors, bailiffs, sheriffs, and all other officers, as well military as civil, in their respective places, are thereby required to be aiding and assisting in apprehending the said John Lilburne, and in putting the said act in due execution, as in and by the said act of parliament appeareth. And that the said John Lilburne, late of London, gentleman, the statute aforesaid not weighing, nor the punishments therein contained any whit fearing, after the expiration of the said 20 days, to be accounted from the said 15th day of January, 1651, as aforesaid; to wit, the 15th day of June, in the year of our Lord 1653, was found, and was feloniously remaining within England aforesaid; that is to say, at London, to wit, in the parish of Giles without Cripplegate, in the ward of Cripplegate, London aforesaid, against the form of the statute aforesaid, and against the public peace, &c. SADLER."

Which being heard and read, he saith, that it appears by the said Indictment, that he stands indicted by the name of John Lilburne of London, gentleman, by virtue of an Act of parliament made the 30th day of January, 1651; grounded upon a supposed judgment given in parliament against him the said John, or one lieutenant-colonel John Lilburne, for several crimes and misdemeanors therein contained. And therefore he the now prisoner at the bar, doth humbly pray Oyer, or hearing of the said act, judgment, and supposed crimes mentioned in the said act, according to law, and under the Great Seal of England, to enable him to plead thereunto. And he will ever pray for your honours and bench.

JOHN LILBURNE.

Which being handed into the Court, Mr. Recorder looked upon it, and said, Mr. Lilburne, this is not signed under your counsel's hand; the thing that we expect is, your Except-



tions signed by your counsel : what call you this parchment ?

*Lilburne.* I know not, Sir, what more properly to call it, than my legal demand of Oyer, or hearing in open court the Act of parliament upon which the indictment is grounded, and the judgment upon which the act is grounded, and the crimes which is the foundation of all. And, Sir, let me tell you, my counsel commands me to insist, and dwell upon the demand of Oyer as my right, and as the chiefest shield and buckler I have to defend my life : for they say, if no legal crimes can be produced upon which the judgment was grounded, all is at an end, and there can be no more proceedings against me. And I am sure, there can be no felonious crimes in law produced against me, for I never committed any in all my days, never was any legally so much as pretended to be laid unto my charge : therefore, my lord, as my birthright, and inheritance, I demand the benefit of the law, which is Oyer, or hearing of the Act, judgment, and crimes. But the Recorder, the Lord Mayor, and several others endeavoured to interrupt him.

Whereupon he cried out again and again, My lord, rob me not of my birthright, the benefit of the law, but let me have Oyer ; which again and again I demand as my right, and inheritance. [But four or five in the court again interrupting him, viz. the Lord-Mayor, Mr. Recorder, Mr. Attorney-General Prideaux, and mumbling Mr. Hall ;] my lord, rob me not of my birthright, the benefit of the law, nor interrupt me not, but give me free liberty to speak for my life. And, my lord, if you will be so audacious and unjust in the face of this great auditory of people, to deny me, and rob me of all the rules of justice and right, and will forcibly stop my mouth, and not suffer me freely to speak for my life according to law, I will cry out and appeal to the people, and do cry out, and appeal to all the people that hear me this day, how that my lord-mayor, and this court, by violence rob me of my birthright by law, and will not suffer me to speak for my life. [At which the court being in a great heat and rage, Mr. Recorder sent the prisoner his parchment, and money out of the court again ; but he would have none of it, but commanded the clerk again to receive it, and enter it upon record at his peril.]

Mr. Attorney-General Prideaux being very busy to hold the prisoner to questions to insnare himself, as whether he was that John Lilburne meant, and intended in the Indictment and Act, or no, and to stave him off from pursuing his just demand of Oyer ; which the Prisoner perceiving, falls upon the said Mr. Prideaux to this effect :

My lord ; I had thought the other day I had said enough to have silenced that gentleman at this place ; but, my lord, seeing he will needs be doing, and speaking, I beseech you, my lord, let me desire to be satisfied, and to know in what capacity that gentleman is here at this place ; for I am sure, my lord, he is no judge

of the law, nor no citizen, and therefore cannot, as a justice of peace, sit upon the bench as one of my judges. And, my lord, if he be my prosecutor, as he is Attorney-General, he can be no more ; and if so, my lord, it is an amazement to me, that your lordship and the court will so dishonour yourselves, as to suffer a bare prosecutor to sit amongst you upon the bench, as one of the chiefest of you, with his hat on his head. My lord, do that which becomes you, and thrust him down to the bar, and there let him (as I do) stand with his hat in his hand, and know his office and duty, and prate there. But, my lord, whether he sits as my judge, or my prosecutor, he is no competent man to be in either place ; because, my lord, he is legally an impeached traitor, by one esq. Elliot, now prisoner in Newgate ; who, my lord, avows to me, that he hath long since, before the Lord Chief-Justice Rolls, and the rest of the judges of the Upper-Bench, legally and formally in law exhibited a charge of high-treason against him ; which he avows the court hath accepted of, and recorded as formal in law, and required of him to enter into great bonds to prosecute it, and make it good : and, my lord, here is a duplicate of the said charge of high-treason, which the esquire's own hand gave unto me as a true copy. And besides, my lord, he further vows to me, that the Attorney-General, by reason of his late power and greatness in parliament, the said Attorney-General stands out in contempt, and scorn of the law, and neither will, nor dare answer his said charge of high-treason ; in which regard of his contempt of the law of England, through his own acknowledged guilt thereby, he hath almost brought him at law to be outlawed as a traitor : which he avows, as soon as it is perfected, whenever he can meet the said Attorney-General, and apprehend him, he will without any more ado execute him as a traitor.

In all which regards, my lord, I do avow Mr. Attorney-General, in law, to be altogether uncompetent, either for my judge, or prosecutor, or any man's else whatsoever ; or so much as to be at liberty, to converse with the honest and untainted people of England till he hath yielded conformity to the law, and answered to his said charge of high-treason. [Unto which Mr. Recorder seemed to make some answer in the Attorney-General's behalf, which the prisoner hereof not well hearing, cannot set down.]

But Mr. Recorder fell upon the prisoner, and told him how he had trifled away the time of that court, and had had more favour than any prisoner ever had.

Mr. Lilburne endeavouring to reply, the Court over and over again and again interrupted him ; but he would go on, and crying out, said to this effect : Mr. Recorder, I wonder you are not ashamed to tax me with trifling away time, when it is only yourself and the Court that are truly guilty of it, in making me spend my lungs and my spirits for two or three days together, to plead and contest with you, before you

would grant me that which is so absolutely my right by law, as a copy of my Indictment is: so that, sir, with your favour, it is you that trifle away time, and not I. And whereas you say, I have had more favour than ever prisoner had; I wonder, Mr. Recorder, you are not ashamed so to say; for what favour at all have I had, when I have not yet enjoyed so much as the law allows me? Sir, let me tell you, the learned men of the law, the Lord Chief Justice Rolles, and the judges of the King's or Upper Bench, allowed the lord Macguir, that arch bloody Irish Rebel and Traitor who was indicted before them for his life, a thousand times more favour than you do me: for although his crimes were notoriously wicked, even in the eye of the common or known law of England, and obvious and perspicuous almost to the sight of every eye, yet when he made, as my information hath often told me, but one single exception in a punctilio, or formality about his peerage, against his Indictment, the judges assigned him learned Counsel in the Law, to plead it, and time enough for him and them to study and frame their arguments in law upon it.

**Mr. Recorder.** Mr. Lilburne, you tell us much of the advice your counsel has given you about the Oyer, can you shew us their advice under their hands?

**Lilburne.** Yes, sir, that I can.

**Recorder.** Well, produce it.

**Lilburne.** Sir, do ye mean to the point of the Oyer?—**Recorder.** Yes.

**Lilburne.** Well then, sir, it may be as to the punctilio of a word I have mistaken you; but I am sure I have it under one of their hands, and two witnesses at the bar to depose it upon oath, that the other expressly advised it, as the main essential thing to my life and well-being!

**Recorder.** Mr. Lilburne, for all your pretence of integrity, the auditors may take notice, that you aver a falsehood in the open Court that you are not able to make good.

**Lilburne.** In the midst of those many and eager interruptions that I meet with from three or four of you at a time, it is easy for a stronger memory than mine, to let a slip fall in the punctilio of a word; but, sir, to the utmost of my disparagement, and disadvantage, make the worst of it you can; and see what it can amount unto. For in the first place, I do avow with my life, that I saw Mr. Norbury, with his own hand, write these very words upon the back of the Copy of the Indictment, which is here in my hands, and are as followeth:

‘Mr. Lilburne ought to see the Certiorari, and the return of the Certiorari; and if the Act be certified without the judgment, which is recited therein, all is invalid for the Commonwealth.’

Mr. Steele was pleased to spend some time upon cavilling at Mr. Lilburne's mispronouncing the word *Certiorari*; although he had formerly told the Recorder, he neither understood Latin, nor French, nor could well read either of them. And then he told them, that

most lawyers hands were very ill to read by persons that were not well acquainted with them; but, Sir, saith he, here is Mr. Norbury's own hand, and I do avow it upon my life for a truth that my eyes saw his own hand and pen write it.

Secondly, If my memory mistake not, I have Mr. Maynard's hand to the same thing also: in those instructions that Mr. Maynard under his hand sent me, by my father and brother this day, both of whom are here present in Court, upon their oaths to justify, that if it be not plainly expressed under his hand, that by word of mouth, it was the principal instruction he gave unto them, to give unto me to insist upon, as my right, to demand the Oyer, &c. But, Sir, as for the Paper itself, there it is, read it: which paper followeth in these words:

‘It said, that ‘John Lilburne the 15th of June, 1653, was found, and was feloniously remaining in England.’ This is insufficient, for it is not said that he was feloniously found; so that the being found in England is not laid within the Indictment. Secondly, ‘And was feloniously remaining,’ it should be said, was then and there feloniously remaining. So there is no Felony charged in his being found. There is no time charged of that which is laid as a Felony. John Maynard, the 16th of July, 1653.’

And by way of postscript in the same hand, there are these words, ‘That the Prisoner at the Bar is to desire, that he may have counsel to plead his Exceptions.’ And in the same paper, in somewhat a different hand, there are these very words, ‘I pray the Oyer of the Act of Parliament the Indictment is grounded upon; pray enter it upon record, accept of no copy but the sight of the record under the Broad Seal.’ Which paper the Recorder reading, and seriously viewing, said, Mr. Lilburne, this paper will not reach your purpose; for those lines that seem to be Mr. Maynard's, are not home to the thing in hand, and those lines that are for your purpose are in a quite different hand.

**Lilburne.** Well, Mr. Recorder, it matters not much, for I am sure the paper is not in the least of my writing; for I had it as it is from my brother, that I sent to Mr. Maynard with my father about my business, and I am sure it either all is Mr. Maynard's hand, or my brother's; who writ down from the words of Mr. Maynard's own mouth, those instructions that he gave unto him and my father for me to dwell and insist upon, and to venture and cast my life upon. There they both are, I pray administer unto them both their oaths, that they may freely speak before the Court, what Mr. Maynard said unto them in this particular point about the Oyer, &c.

Whereupon old Mr. Richard Lilburne, the prisoner's father, with his son-in-law Mr. Thomas Gore, began to speak, and to justify what the Prisoner had alleged; but the court interrupted them, and commanded them to be silent, and would not let them go on. But Mr. Re-

corder, taking liberty to speak as long and as often as he pleased, took the liberty several times to calumniate, and render odious the Prisoner at the Bar, for averring a falsehood in the open Court: and so sometimes did the Lord Mayor also, although his honour was pleased to shew Mr. Lilburne a printed Petition a day or two before, and did solemnly in the face of all the Court aver, that the woman, pointing to Mrs. Dormer, then a Prisoner at the Bar, had avowed that she had the said printed Petition, and others of the same kind, from Mr. Lilburne. Upon which the said Mrs. Dormer openly cried out, That's false, my lord, I never said any such thing in my life.

Upon these furious hurley-burleys, that happened betwixt the Lord Mayor, Mr. Recorder, the Attorney General, and mumbling Mr. Hall the Attorney of the Dutchy, and Mr. Lilburne Prisoner at the bar; Mr. Lilburne's father and his brother-in-law Mr. Gore, and one Mr. Thomas Huws, but especially Mr. Thomas Prince, pressed to speak; but could not be permitted, but were again and again interrupted and silenced.

But Mr. Prince pressed hard on, and told the Lord Mayor to this purpose: 'That it was the known law of England, that any by-stander whatsoever might speak for the prisoner's benefit at the bar, especially when they apprehended the prisoner was like to be wrong'd, and denied his birthright, the benefit of the law; and this privilege, my lord, by order of the Court, you have granted up, and other of Mr. Lilburne's friends as our right by law, to speak in his behalf, when we see things urged against him against reason and right; and therefore, my lord, the thing that Mr. Lilburne demands about his Oyer, or hearing read the act of parliament, upon which the Indictment is grounded, and the judgment upon which the act is grounded, and the crimes that ought to be the original of all, is so essentially his right, that it is an amazement to me to see it disputed: and also it is a wonder to me, that any man that pretends so much as to know the very first rudiments, or the very first footsteps of the law, as Mr. Recorder doth, should endeavour to deny such a thing so commonly practised in every ordinary court of justice, in the case of every ordinary bond and bill that a suit is commenced upon.

The Court with violence and fury interrupting him, and silencing him; and Mr. Recorder commanding the prisoner at the bar at his peril to deliver in his Exceptions before it was too late to receive them, and Mr. Hall mumblingly pressing again and again to pass sentence of condemnation upon him; and the Attorney General upon the bench closely pressing to hold him to the point, and not let the prisoner have any elbow-room to go from it; and Mr. Lee, the Clerk of the Court, (like a most detestable tyrant) pressing to gag the prisoner at the bar, that so he should speak no more, and immediately pass sentence of condemnation upon him, and take him away: the Prisoner

clearly perceiving the violence and fury of the Court, with an extreme, earnest, ardent and fierce, and shrill loud voice, cried out;

'My lord, will you murder me without right of law, by robbing me of my birthright, and denying me of Oyer, which is as much my right by law, as the blood that runs in my veins? My lord, are you afraid, and ashamed to produce that Act of Parliament upon which you pretend to ground your Indictment, upon which you would take away my life? My lord, if you thus proceed, you will give me and the people cause to believe, that there never was such an Act of Parliament as you pretend, nor such a Judgment as it pretends to be the executor of; nor no such crime ever committed or acted, as any judgment of felony can be imagined to be grounded upon; but that rather all your proceedings against me, from first to last, is a malicious packed conspiracy against me to murder me, and without ground or cause to take away my life. For whose life have I feloniously taken away, or endangered? And if none of all these things in the least can be laid unto my charge, or never were, where is the act of felony that I have committed, upon which I am endeavoured to be hanged?'

But the officers crying out, 'Hear the Court;' and the said mumbling Mr. Hall still in his pitiful ill tuned song of pressing for went against the prisoner; and so many of the Court fell upon him at once, to deliver in his Exceptions before it was too late, as made the proceedings of the Court full of confusion.

Mr. Lilburne. My lord, I may not part with my Exceptions till my demand of Oyer be read. My lord, my able and honest counsel, both of them, in both of whom I have found a great deal of faithfulness and truth to me, have commanded me to dwell upon my demand of Oyer, as upon my life, and as upon a thing that is my undoubted right by law, that cannot, nor ought not to be denied me. My lord, the security of my life lies in it; and if it be granted me, I am for ever out of all danger of gunshot, because it is possible you cannot produce one line of a legal Act of Parliament, nor one syllable of a legal Judgment, nor, I am sure of it, so much as any shadow of pretence of a legal crime of felony to be the foundation of all: and if so, they tell me absolutely all your proceedings against me are at an end, and I am safe and secure. Therefore, my lord, I again and again press, to leave the Court without excuse, and do demand before all these people Oyer, or hearing of the Act, Judgment and Crimes upon which your Indictment is grounded, as a thing that is as much my right by law, as the blood that runs in my veins: therefore, my lord, deny it me not.

'Mr. Lilburne,' saith the Recorder, 'it is late, and we cannot spend much more time about your business; and the Court hath already told you, they neither will nor can receive in your parchment for Oyer, without your Counsel sign it.'

Mr. Lilburne. Alas, Sir, I have dealt fairly

fully and truly with you, and told you, that it is drawn up by their instructions: but really and truly they were both gone out of London, before pen could be put to paper to draw the rough draught of it; and therefore it was impossible to get their hands to the ingrossed copy. Wherefore I beseech the Court to give me time but till Monday morning, and I will send after them for their hands; and engage not only to get their hands to the parchment, but to bring one or both of them to this bar, to justify their instructions to me, and that their instructions are law. Therefore, my lord, be pleased to grant me but till Monday morning, and I will have them here, although I horrow money to send two coaches with six horses a-piece to fetch them back.

*Lord Mayor.* No, the Court breaks up to-night, and therefore we cannot give you till Monday.

*Recorder.* Mr. Lilburne, seeing you insist so stiffly upon it for your Oyer, I will tell you what we will do with you: put in your Exceptions to-night, which you have under your counsel's hands, and the Court will assure you that in case your counsel at our next meeting about your business, will avow that your parchment for the demand of Oyer is law, we will grant it you; and your putting in your Exceptions now, shall be no prejudice to you in any kind.

Mr. Lilburne endeavouring to speak, to close with him, several of his honest and true friends that stood by him, cried out, There was a snare laid for him, and bid him rather die than go an inch from his counsel's honest, just, and safe instructions. At which the Court grew very angry, and judgment again began to be pressed against the prisoner at the bar: and the Court required the Exceptions, without any more ado, to be delivered in.

*Lilburne.* Well then, my lord, seeing I have done my utmost to obtain my right by law, which is to have the Oyer of the act, judgment, and crimes, upon which the Indictment is grounded, and it will not be granted me, but the Court hath over-ruled me; therefore, my lord, to let all the world know that I am no bawler, nor procrastinator of time, nor have any thing of guilt, fear or dread within me, although it be never so much to my wrong, and tend never so much to my apparent disadvantage or my ruin, I will close with Mr. Recorder, and immediately deliver in the Exceptions that I have in my hand-already, signed by my counsel as a part of my Exceptions; provided he will distinctly repeat over the promise of the Court, and enter it upon record in the Court's books, and order the clerk immediately to draw up an order upon it, as large as it is in itself, and give it me legally signed before I stir from the bar.

'No,' saith Mr. Recorder Steele, 'Mr. Lilburne, the doing of that that you require, would take up too much time, and therefore the Court cannot do it: but they will make good what I have said unto you.'

Whereupon, Mr. Lilburne repeated what Mr.

Recorder (in the name of the Court) had promised, and said, Sir, is not this, that the Court will stand to? Yes, saith the Recorder. Then, Sir, I beseech you, in the audience of all these people, (that they may bear witness) repeat it over again yourself. Which he did: and Mr. Lilburne closed with him, and accordingly delivered in his Exceptions. And at his coming to his lodging, some of his friends drew up the promise of the Court in writing, and set their hands to it; which thus followeth:

"That if Mr. Lilburne would deliver in the copy of his Exceptions, the not granting at this time his Oyer should be no prejudice to him. And further, That the Court was to consider of a time to have the Exceptions debated by counsel: and if the counsel of John Lilburne, gent. when they came to plead to the Exceptions, conceived it necessary and right to have the Oyer, that then it should be granted him, before any proceeding upon the Exceptions should be, as if the Exceptions were not delivered into the Court. Witness, Richard Lilburne, George Wade, Thomas Webbe, George Lilburne, jun. William Lilburne."

*Lilburne.* My lord, I here deliver your lordship and this honourable Court, part of my Exceptions under my own and my counsellor's hands: but my lord, I have many more to make, when I shall hear the Oyer, and have copies of the act, judgment, and crimes, according to my right, that your Indictment is grounded upon. And then spoke as follows:

My lord; I have given into the Court my demand for Oyer, fairly ingrossed in parchment under my hand, and part of my Exceptions against the Indictment, which are very difficult points in law, and beyond my reading and skill fully to argue, and therefore I must depend upon my learned counsel for that.

It was never denied! the worst of Traitors to have copies of their Indictments, and counsel to argue the points of law for them. The lord Macguire, the great bloody rebel of Ireland, indicted for Treason lately at the Upper Bench, had his counsel to argue before the learned judges thereof, when he was indicted for High Treason, and spent much time only about his title of baron. Duke Hamilton, lord Capel of late, and the lord Castlehaven formerly, were never denied it, nor the earl of Strafford: yet all these persons were tried for facts that were crimes in the common law, for treachery, and bloodshed, and foul offences, such as the law of nature forbids and abhors (and had laws made before their facts to be their guide.) But my only crimes are, that my name is John Lilburne, and that I am in England, my native country: and the matter of law that rose in their cases was only upon the formality of the Indictment of charges against them, and consequently less need of serious arguments in law; yet the law is so tender of blood and life, that it takes away no advantage from any man whose life is in question or danger.

But, my lord, I beseech you consider the difficulty of my case; the very crimes whereof I am accused, have no foundation in the common law, I am only accused for being in my native country; and the pretended law against me lays no crime to my charge: I have wronged no man in his property; I have designed no evil against my country; I have hurt no man in his liberty, nor life, nor member.

The very crime laid to my charge, may be called a point of law: it is supposed to arise upon the breach of a pretended act of parliament, so that it is not in matter of form, or in the formality, or nicety of proceedings against me, that the point in law arises in my case; it is about the nature of the crime itself whereof I am accused, and therefore counsel learned in the law is more necessary in my case, deliberately and maturely to argue it before all the learned judges of the law in England, than in any case that hath been tried in England this 500 years; here is no light to lead my judges in their judgment, but the very light of the law itself, being a strange kind of single act made in a strange kind, or unknown and unheard-of manner. Here is no precedent, no example to help them; the like cause, I dare avow it, was never tried in England before, and all England, and their posterities, yea the babes in their mothers wombs, are concerned in the event of my trial. Whatsoever is the issue of my trial, will hereafter be drawn into a precedent, either for the good or evil of all the people of England. Besides, the shedding of my blood without cause or reason, must needs bring guilt, punishment, and misery upon the causers and permitters thereof. Remember righteous Abel's case, Naboth and Uriah; therefore I hope much caution will be used in determining the difficult points of law in my case. My lord, not for my own sake, for the sparing of my blood, though I am bound to preserve it, if I can, by the great law of nature; yet, my lord, if my life were only at the stake, I could contain it, if I saw my contempt of it might serve my country, and restore it to its liberty and freedom. But when the liberties of millions of persons already in being, and yet unborn, which consist and subsist in being ruled by written laws and rules: when these are at the stake, I hope the difficulties of the law in this case, shall be seriously weighed, and solemnly debated by the most experienced men in the law in the whole nation.

The copy of the fore-recited Exceptions thus followeth:

**THE EXCEPTIONS** of John Lilburne, Gent. Prisoner at the Bar, to a Bill of Indictment preferred against him, grounded upon a pretended Act, intitled, 'An Act for the Execution of a Judgment given in Parliament against Lieut.-Col. John Lilburne;' which Judgment is by the said Act supposed to be given the 15th day of January, 1651.

The said John Lilburne, prisoner at the bar,

saith, That the said Indictment is insufficient, in the law, in matter, substance and form. And he humbly offereth these Exceptions following against the same.

**Exception 1.** For that the said Indictment is grounded only upon an act intitled, 'An Act for the Execution of a Judgment given in Parliament against lieut. col. John Lilburne.' And it doth not appear, either by the title of the said act recited in the Indictment, or by any thing contained in the said act, that either the said act itself is an act of parliament of the Commonwealth of England, or of the parliament sitting at Westminster; or that the said supposed judgment, for the execution whereof the said act is supposed to provide, was given in the parliament for the Commonwealth of England, or in the parliament sitting at Westminster? nor yet when the said parliament did commence or end, or whether the same was held by prorogation or otherwise. And it is evident in law, that no law could at that time be made, but by the parliament of the Commonwealth of England; for by the law then in being, the power of making laws was only in those persons which were known and distinguished by that title of the Parliament of the Commonwealth of England; and in that name only addresses were made to them, both by the people of England, and by all foreign states and princes, and all addresses refused that wanted that title. Now for ought that appears in the said act, whereupon the said Indictment is grounded, it may be as well an act of parliament in France, or Scotland, or Naples, as an act of the parliament of the Commonwealth of England; so that it doth not appear, that the said Indictment is grounded upon any law of England; or that John Lilburne, prisoner at the bar, is indicted for any fact that is a crime by any law of England, and then the same is void in law.

**Exception 2.** The said Indictment is grounded upon the fore-recited act, intitled, 'An Act for the Execution of a Judgment given in Parliament against lieut.-col. John Lilburne;' and so relates only to some judgment supposed to be given in parliament against the said lieut. col. John Lilburne; and if no such judgment were given, the act were void, and the judgment also. Now it doth not appear that any judgment, for any crime whatsoever, was given in parliament against the said lieut.-col. John Lilburne. 1. Before any judgment can be given in law against any Englishman, for any crime, there must be either an Indictment, presentment, or some information or accusation against him, to that court that judgeth him, for some crime supposed to be committed by him. 2. The party accused must either appear before that court, or be out-lawed for not appearing. 3. If the party appears, he must either confess the crimes or misdemeanors whereof he is accused, or else plead to the indictment, presentment, or information, or accusation against him, and come to trial thereupon. And as some of these ought in law to precede a judgment

against any Englishman, so also some of these afore-mentioned proceedings, in order to a lawful judgment, ought to be entered upon such record, wherein any such judgment is entered; and unless it doth appear upon the record, wherein any judgment is entered against any Englishman for any crime, what some such proceeding as aforesaid, hath been made before the judgment passed against him, the judgment is to be holden for erroneous and void, and ought so to be reputed. Now it doth not appear either by the said pretended act, as it is recited in the indictment, nor by any record of the supposed judgment produced, nor any otherwise, that there was any indictment, presentment, or information to the parliament of the Commonwealth of England against the said lieutenant-col. John Lilburne; or if there were, it doth not appear, that he ever appeared to the same, nor that he was ever outlawed for not appearing; neither doth any pleading by the said lieutenant-col. John Lilburne to any such indictment or information appear, nor any trial of him for the same. And therefore if any such pretended judgment be entered, as the said supposed act, and the Indictment of John Lilburne, prisoner at the bar, thereupon, doth relate unto, the same is erroneous and void in law; and by consequence the said indictment is void.

*Exception 3.* The said Indictment is erroneous and insufficient in law, for that it is only grounded upon, and recites an act, which act is declared to be made for the execution of a judgment passed in parliament against lieutenant-col. John Lilburne, the 15th day of January, 1651; when in truth there was no such judgment, either in matter or form, passed in parliament on the said 15th day of January, 1651, as is enacted by the said supposed act, to be executed against the said lieutenant-col. John Lilburne; and as is also recited in the said indictment, to be enacted by the said act, to be put in execution against him. First, There was no judgment passed in parliament upon the said 15th of January, 1651, that the said lieutenant-col. John Lilburne should depart out of England within twenty days, after the said 15th day of January, 1651, as is mentioned in the said indictment. Secondly, There was no Judgment passed in parliament, upon the said 15th day of January, 1651, that the said lieutenant-col. John Lilburne should depart out of England, Scotland and Ireland, or the islands, territories, or dominions thereof, within any limited time whatsoever, or under any penalty whatsoever, as is mentioned in the said Indictment. Thirdly, There never was any Judgment passed in parliament, the said 15th day of January, 1651, that the said lieutenant-col. John Lilburne should be executed as a felon, without benefit of clergy, in case the said lieutenant-col. John Lilburne should be found, or be remaining in England, Scotland, or Ireland, after the expiration of twenty days, or any other time whatsoever, to be accounted from the said 15th day of January, 1651. And if no such Judgment doth appear to have been passed against the said

lieut. col. John Lilburne, as is aforesaid, and as is recited by the said Indictment, to be enacted to be put in execution against him; then the original ground of the said Indictment is null and void: Which is a Judgment supposed to be passed in parliament against the said lieutenant-col. John Lilburne, in matter, substance, and form, as aforesaid, upon the 15th day of January, 1651, which is enacted by the said act recited in the said Indictment to be put in execution: whereas no such Judgment ever passed; and therefore cannot be supposed or admitted by the law to be enacted to be put in execution: And upon these reasons and causes the prisoner at the bar conceives the said indictment to be insufficient in the law.

*Exception 4.* The said John Lilburne further excepts against the said Indictment, as insufficient in the law, in regard of the uncertainty of the same; the law requiring all allegations against any man to be certain; for that the said Indictment doth recite and ground itself upon an act, made for the execution of a Judgment passed in parliament against lieutenant-col. John Lilburne; and then chargeth John Lilburne, late of London, Gentleman, to have been found in England; that is to say, in London, contrary to the said act: but averieth not that the said John Lilburne, now prisoner at the bar, indicted by the name of John Lilburne, late of London, Gentleman, is one and the self-same person, with the said lieutenant-col. John Lilburne, meant and intended by the said act; and not other or divers: by reason whereof, and for that there are several persons known and distinguished by the name of John Lilburne, of London, Gentleman. And for that the said John Lilburne, prisoner at the bar, doth not acknowledge that he now is, or at the making of the said act, or passing the said supposed judgment, was a lieutenant-colonel, or that he could be notified and distinguished by that title; he, the said John Lilburne, prisoner at the bar, cannot join any certain issue with the Keepers of the Liberties of England upon the said Indictment. For the said Indictment not averring the said John Lilburne, now prisoner at the bar, to be the same person, and not other, or diverse from that John Lilburne, intended and meant in the said act, and distinguished from all others of the same name, by the title of a lieutenant-colonel; if the prisoner at the bar should plead the general issue of Not Guilty, he should confess himself to be the same John Lilburne, intended by the said act; else he is not concerned to plead to the said Indictment. And by consequence, if the prisoner at the bar should plead Not Guilty to the said Indictment; the only issue to be tried in point of fact between the Keepers of the Liberties of England and the prisoner would be, whether John Lilburne, prisoner at the bar, was found in England, upon the 15th day of June, 1653? and by consequence, the prisoner at the bar, though he be not the person intended by the said act, might be ensnared and condemned as a felon, only because his name is John Lilburne;

and if any other John Lilburne should in like manner plead to the said Indictment, he should suffer, because he is called John Lilburne.

For all which errors and insufficiencies in the law, in the said Indictment, Act, and suppositional Judgment, appearing, the said John Lilburne, prisoner at the bar, humbly prayeth, that the said Indictment may be quashed; and in case the honourable Court be not fully satisfied in the said errors and insufficiencies of the said Indictment, he prayeth that counsel learned in the law may be assigned him, and a competent time given for him to advise with them, and for them to prepare their arguments upon all the said matters of law. And that the case being of very great difficulty, and much concernment to the liberty of all the people of England; and being a case without any precedent; and the shedding or sparing of innocent blood, depending upon a resolution thereof: he humbly prayeth, that the said difficult points of law, arising upon the case, may be argued before the reverend judges of the law, as hath been accustomed in such cases, that their opinions may be had thereupon.

Signed John Norbury, John Maynard; and presented to, and accepted by the Lord-Mayor, and the honourable Bench, July 16, 1653. JOHN LILBURNE.

But the Court being eager to see the Exceptions, the cryer commanded silence, and to hear the Court, who had commanded their clerk with a low voice to read them the title of the Exceptions amongst themselves. Whereupon, as soon as the prisoner at the bar perceived the Court had heard the title, he desired them to read them all over with an audible voice. But withal, my lord, said he, I beseech you and the Court to take notice, that they are but part of my Exceptions, which the Court hath forced and compelled me to deliver in.

At which the Lord-Mayor was very angry, and said, Mr. Lilburne, you are very much to blame, thus to abuse and scandalize the Court, in saying we have compelled you; you may take your Exceptions again, if you are not free to deliver them in. Give him them again.

*Lilburne.* No, my lord, I will have none of them: for seeing they are in, they are in; and I will stand to them, and maintain them with my life; and I hope, and doubt not but my honest and learned counsel will back them with strong and irresistible arguments of law. But, my lord, hereafter I shall endeavour to keep the Court close to their promise, made unto me by their mouth, Mr. Recorder about the Oyer: for, my lord, here are witnesses enough of it. But, my lord, whereas you say I have abused the Court, in declaring that they forced and compelled me to deliver in my Exception; my lord, I absolutely deny it, that that averment is any abuse at all to the Court. You know, my lord, you have over-ruled me in point of reading my parchment about the Oyer, and you have ordered me to deliver in

my Exceptions to the Indictment, which you know I have averred by law, I ought not to be compelled to, till I have legally the Oyer: so that, my lord, I must yet aver that in the eye of the law you have committed a force and compulsion upon me. But, my lord, I have done with it.

They spent some time in reading the beginning of the Exceptions; which (an observant man might easily see) did very much trouble both the Lord-Mayor and the Recorder. But the Prisoner withdrew; and by several of those that sat nigher the Lord Mayor and Recorder than he stood, he was certainly informed that the Attorney-General (Prideaux), who sat upon the bench, although he would not speak much openly and publicly, yet he constantly, in a whispering or clandestine way, pressed the Court to keep the Prisoner close to the question; 'Whether he was the John Lilburne meant in the Act or no?' and to give him no elbow-room to let him get off it: And that Mr. alderman Atkins was in a pitiful frightened condition, when the Prisoner appealed to the people against their injustice. And that the pitiful alderman most lamentably cried out to colonel Okey, presently to send for some troops of horse, to secure his worshipful person. And that Mr. Lee, the clerk, was extremely earnest to have the Prisoner gagged at the bar, that he should speak no more; and privately pressed very hard, immediately to have him condemned and taken away. And that the Lord-Mayor, at the reading of the title, in which the act is called, 'A pretended 'Act of Parliament,' said unto the Recorder, 'We are undone, if we receive in this; for we shall be adjudged betrayers of our trust. And at their reading the first Exception, the Recorder was amazed, and said, he wondered how Mr. Lilburne could get learned men in the law to sign such Exceptions? And the Lord-Mayor asking him, what that Mr. Norbury was whose hand was first to the Exceptions; the Recorder told him, he had lately been a Judge in Wales. My lord, I do not so much wonder at his setting his hand to the Exceptions (for I have known him for many years to be a man of principles something in affinity to Mr. Lilburne); but for Mr. John Maynard, one of the greatest lawyers of England, and one of the greatest practitioners of the nation, for him to set his hand to such Exceptions, is that (my lord) amazeth me. For if his very first Exception of Mr. Lilburne's be good in law, then all the late acts of parliament are totally invalidated, as well as that which he speaks against.

Then the Court broke up.

Notwithstanding the strictest enquiry, we cannot find that Lilburne, or his friends, or any one else, ever published the remainder of his Trial. Mr. Whitelock, in his Memorials p. 560, says no more than this. "July 13, 1653, Lieut. Col. Lilburne was arraigned at the sessions in the Old-Bailey, upon the late act for

his banishment. July 14. Lieut. Col. Lilburne was brought again to his Trial, but he urged for further time in regard the counsel assigned him refused to appear for him only serjeant Maynard, who was sick; and he had an order for a copy of his Indictment. July 17, Lilburne was brought to his Trial, but nothing done in his business; and page 563, says, "Aug. 11. Lilburne's Trial proceeded at the Sessions-house. 16th. Mr. Lilburne's Trial at the Sessions-house proceeded. 20th. The Jury found Lilburne Not Guilty; he pleaded long for himself."

Nothing of these three last days Proceedings are printed.

In a Book entitled "Lieut. Col. John Lilburne Tried and Cast, or his Case and Craft discovered," 4to, 1653, is recited some of his speeches at his Trial, and animadversions on them; which shews that the Colonel made a notable Defence. His speeches, as mentioned in that book, page 125, &c. are as follow:

Concerning the act whereupon he was indicted, thus he said; It was a lye and a falsehood: an act that hath no reason in it, no law for it; it was done as Pharaoh did; Resolved upon the question, that all the male children should be murdered. That if he died upon this Act, he died upon the same score that Abel did, being murdered by Cain. That the act was a void act, a printed thing, there being no one punctilio or clause in it, grounded on the law of England, and that it was an unjust, unrighteous, and treacherous act, and that he doubted not to shatter that act in pieces. "That they could not make an act of parliament, since the king's head was cut off. By the same law they voted him to death, they might vote his honest twelve Jurymen."

He said, The parliament, before the king's head was cut off, and the members taken out, were in their purity a gallant parliament, who were tender of the liberties and welfare of the nation, and walked in the steps of their ancestors and fore-fathers; then were the days of their virginity, they made good and righteous laws, and then they had no force upon them. But since 1640, and 1641, there have been no good laws made.

He affirms, that it was no lawful parliament that made that act. Again, the parliament that made this act of banishment was no parliament. I will prove it. And the parliament was rather transgressors than I. Again, admit the parliament legal, they had no power to send for me. If there were any judicatory in parliament, it was the Lords house, not the Commons.

As for all parliaments in general, he said parliaments were a delegated power, and ought to give a reason of all they do; and that it was not in their power (as he had proved in his plea at large, before the Lord Chief Justice

Rolls and Mr. Justice Bacon, May 18, 1647,) nor had they the least jurisdiction, to sentence him, or any of the least free-born Englishman; unless it be their own members. That all crimes whatever were to be heard, determined, and judged at the Common-law, and no where else. Acts of Attainder were not lawful.

Speaking to the Lord Mayor; This is the strangest thing (saith he) that ever I saw, that a man must be cheated of his life. Good my Lord Mayor, you have made yourself a party in my case, and taken a wrong John Lilburne; and if you do not make me hang, you are afraid of yourself. You make the land groan under your burthens and oppressions; I desire you will not deny me my right, that I may not lose my life in the resolve of a question, That John Lilburne shall be hanged; which in time may come to murder your posterity, and the posterity of those that hear me this day.

He told the lord Keble, that he had nothing to do to judge him, being a party, and had a salary of 1,000*l.* per annum from the State.

To Mr. Prideaux, Attorney General, he said, You are a blood-thirsty man, and you come here to justify your unrighteous act, and I hope the Jury will take notice of all your violence. It is the admnation of my soul, that he should be a judge in his own case; to have a man sit as my judge that thirstest after my blood.

He said, that the army (many of them) have been very good instruments for the good of the nation, to deliver us from tyranny. I wish there is not a greater than they delivered us from.

For the Jury, he called them his honourable Jury, and said they were the Keepers of the Liberties of England; and will make it appear that the Jury are the Judges of the Law, as well as of the Fact.

Moreover he charged them to consider, Whether if I die on the Monday, the parliament on Tuesday may not pass such a sentence against every one of you twelve; and upon your wives and children, and all your relations; and then upon the rest of this city, and then upon the whole county of Middlesex, and then upon Hertfordshire, and so by degrees there be no people to inhabit England, but themselves? I call Jehovah to witness (saith he), and do here protest before God, Angels and Men, I am not the person intended to be banished by that Act; speaking of the Act whereupon he was indicted.

The Jury having acquitted him were summoned before the Council of State, on the 23d of August, 1653; in pursuance of an Order of parliament, of the 21st, to answer for their conduct. The Examination of which Jury here follows.



The Examination of the JURY\* who tried and acquitted Lieutenant Colonel JOHN LILBURNE, at the Sessions-House in the Old-Bailey, upon Saturday the 20th of August, 1653. Taken before the Council of State the 23d of the same Month, in pursuance of an Order of Parliame<sup>n</sup>t of the 21st.

*Thomas Greene*, of Snow-hill, tallow-chandler, Foreman of the Jury, being asked what the grounds and reasons were that moved him to find the said lieut.-col. John Lilburne Not Guilty upon the Indictment preferred against him at the Sessions-house in the Old Bailey, saith, 'That he did discharge his conscience in what he then did, and that he will give no other answer to any questions which shall be asked him upon that matter.'—And being in particular demanded of him, whether he conceived it not sufficiently proved, that the Act whereupon he was indicted was an Act of parliament; whether he was not satisfied that the copy of the Act produced was a true copy of the Act itself, or that the John Lilburne at the bar was the John Lilburne mentioned

in the Act; and what other thing it was which moved the Jury to find as aforesaid: the Examinant answered, 'that he will give no other answer, than as abovesaid, and desired that he might be no further pressed therein.'—And being further asked, why he would not give an account of the grounds and reasons of their verdict, he said, 'He would not do it, for reasons best known to himself.'

*Michael Rayner*, of Friday-street, leather-seller: he saith, That he was one of the Jury that tried lieut.-col. John Lilburne, upon Saturday the 20th instant; and that he was summoned to serve the Jury on Wednesday was sevensnight, and did constantly attend in court, and upon the service, until the Trial was over and that he was not soli-

\* See the proceedings against Sir Nicholas Throckmorton's Jury, *ante*, vol. 1, p. 901, those against Penn and Mead's Jury A. D. 1670, *post*, and the Note to the latter Case. "One who shot a soldier that was to guard him being a prisoner was arraigned at the Upper Bench but the Jury found him guilty only of man-slaughter: the Foreman was disabled from being a Juror hereafter." White-locke Memor. (Feb. 1655-6) 620. "The practice heretofore in use of fining, imprisoning, or otherwise punishing Jurors, merely at the discretion of the court, for finding their verdict contrary to the direction of the judge, was arbitrary, unconstitutional, and illegal; and is treated as such by sir Thomas Smith, two hundred years ago; who accounted 'such doings' to be very violent, tyrannical, and contrary to the liberty and custom of the realm of England." 4 Black. Comm. 361.

"The business of Lilburne is judged and conceived here to be a business of very great consequence; for on the one side Cromwell being so highly set and incensed against him, and on the other side people murmuring so much against such illegal and violent proceedings against the ordinary course and practice, that when one after absolution and sentence given shall be afterwards brought and tried at a higher court of justice, and that the judges shall be summoned to answer and give reasons of their sentence; they say here, that it was one of the heaviest points wherewith my lord Strafford was accused, whereby he came to suffer. There were on Saturday last at his Trial 6,000 men at least, who it is thought, would never have suffered his condemnation to have passed without the loss of some of their lives. To prevent this they had placed two companies of foot soldiers near the place of his Trial,

and several companies up and down the streets to the number of three regiments of foot and one of horse; and the country here round about is full of soldiers. The three gentlemen put into the Tower are thought to have kept correspondence with 24,15,35. (Lilburne) and that they had some great design in mind, having a great party to back them in favour of the king." 1 Thurloe's State Papers 441. Beverning to the Pensionary De Wit, dated Westminster 26 Aug. 5 Sep. 1753.

1 Thurloe, p. 442, Vande Perre to Bruyne, Pensionary of Zealand, dated Westminster. Aug. 26.-Sep. 5, 1653. "Lieut.-Col. John Lilburne is cleared by a Jury. There were six or seven hundred men at his Trial with swords, pistols, bills, daggers, and other instruments, that in case they had not cleared him, they would have employed in his defence. The joy and acclamation was so great after he was cleared, that the shout was heard an English mile, as is said; but he is not yet released out of prison, and it is thought they will try him at a High Court of Justice."

Same page, Beverning to Ingestall.—"The proceedings against Lilburne, Saturday last, after a pleading of sixteen hours, were determined, and he declared Not Guilty of any crime worthy of death. Since, the twelve jurymen have been called to account before the Council to give an account of their verdict, and in the mean time he remaineth a prisoner. It seems they will charge him with farther crimes of treason, and will judge him by a High Court of Justice. There are two or three others of quality put into the Tower about some plot for the service of the king, and that they should have held correspondence with the Lilburne."

cited by John Lilburne, nor any other on his behalf. And the questions mentioned in the foregoing Examination being asked him, he answered, 'that he was satisfied in the verdict he gave in that case; and that he should give no other answer thereto.'—And being further pressed therein, he desired that a day's time might be given unto him to consider of it, and he should give satisfaction to the aforesaid questions. He was further asked, who advised him to make this answer to the Council: whereunto he answered, 'That the Jury were all of that mind; and that they agreed to give this answer at a meeting they had all together at the Windmill-tavern in Coleman-street this morning; which meeting they had upon occasion of the Order of Parliament for examining this business: and that he had notice to come to this meeting by one or two of his partners, whose names (he saith) he doth not well know.—And being further demanded of him, Whether Mr. Scobell, clerk of the Parliament, did not give evidence that lieutenant-col. John Lilburne at the bar was the very Lilburne against whom the act was made? He said he did give that evidence; and that he did believe he said true; and that the copy of the Act of Parliament produced was a true copy: but saith, 'that he and the rest of the Jury took themselves to be Judges of matter of law, as well as matter of fact; although he confessed that the bench did say that they were only judges of the fact.'—He further said, He was very unwilling to be of the Jury.

*Thomas Tunman*, of Cow Lane, salter, another of lieutenant-col. John Lilburne's Jury, who saith that the verdict was Not Guilty. And being asked the questions in the first Examination, he saith, 'That he was sworn to find according to the issue and evidence, and that he did find according to his conscience; and positively refused to give any other answer: and did deny that the Jury, aforesaid, had agreed together to give one and the same answer to the Council, or that they had met together this morning, or at any other time since Saturday-night last, until they came to the Council.' And being asked in particular whether the said Jury did not meet together this morning at the Windmill Tavern in Coleman-street, he positively answered, they did not.

*Emanuel Hunt*, of St. Sepulchre's; who saith, He was one of John Lilburne's Jury, upon his Trial on Saturday last; and that the Jury found him Not Guilty: but his memory being short, doth not well remember the issue.—He being asked, whether it was not proved that the prisoner was the John Lilburne mentioned in the Act, saith, 'He was not satisfied that it was so proved; and that there are many John Lilburnes; and that John Lilburne was indicted of felony, which he did believe he was not guilty of: and that what was found was done by the consent of all, and did satisfy their consciences therein; and refused to give any other answer than as aforesaid.'—And it be-

ing demanded of him, whether the Jury had not met together, to agree of the answer they were to give to the Council, he answered, 'They met together the night of the Trial to drink a pint of wine; and that they met not since until this day.' And being asked what time of the day, he answered, 'Five of them met here.' But being asked particularly, whether they met not at the Windmill Tavern in Coleman-street this morning, he did acknowledge they did, and that Mr. Tunman in particular was there: but refused to declare who gave him notice of this meeting.

*James Stephens*, of the Old Bailey, haberdasher, who saith, That he was one of lieutenant-col. John Lilburne's Jury; and that having considered of the matter whereof he was indicted, they found him Not Guilty. And being asked the questions in the first Examination, he acknowledged, 'That he was satisfied that the prisoner was the John Lilburne mentioned in the act; nor did he yet question the validity of the act: but the Jury having weighed all which was said, and conceiving themselves (notwithstanding what was said by the council and bench to the contrary) to be Judges of law as well as of fact, they found him Not Guilty.'—He acknowledged that all the Jury met this morning at the Windmill Tavern in Coleman-street, to consider what answer to give to the Council, and that the Foreman of the Jury spoke to him to be there, telling him he had heard there was an Order of Parliament for summoning them before the Council: and further saith, That Tunman was at that meeting.

*Richard Tomlins*, of St. Sepulchre's, bookbinder, who saith he was one of lieutenant-col. John Lilburne's Jury; and that the Jury found him Not Guilty. And being asked what was the point of issue, he desired to be excused in that, saying, 'What he can tell, is one thing; but to accuse himself is another thing.' It being further demanded of him, whether he was satisfied that the prisoner was the John Lilburne mentioned in the act, he said he was not. And being asked what made him think so, he answered, 'He was not bound to give any account of what he did in that business, but to God himself.'

*William Hitchcock*, of Watling-street, woollen-draper; who saith he was of lieutenant-col. John Lilburne's Jury, and that the Jury found him Not Guilty. He being asked the questions expressed in the Foreman's Examination, he answered, 'He had discharged his conscience in what he had done; and desireth the council not to ask him any questions, for he can give no other answer, and is resolved to give no other answer.'—And being asked concerning the meeting of the Jury, to agree of an answer to be given to the Council, he first denied that they had any other meeting than what they had the same night his Trial was. But being asked particularly if they met not at the Windmill Tavern in Coleman-street this morning, he ac-

knowledge they did; 'But denied he heard of any Order of Parliament for sending for the Jury; nor did they meet upon the business of John Lilburne, or that they did at the meeting speak of it: but only met to drink a pint of wine, as they had agreed to do the same night they gave up their verdict.'

*Thomas Evershot*, of Watling-street, woollen-draper; who saith he was one of John Lilburne's Jury, and that they found him not guilty: But denied to give any answer to any further questions, saying, 'He was satisfied in his own conscience in what he did.' And being asked whether the Jury did not meet this morning, to agree of an answer to be given to the council, denied that they did, or that they met at all since the night of the trial, until they met at the council.

The Persons following were examined the 29th of August, 1653, in the morning.

*Thomas Smith*, of Cornhill, haberdasher of small wares: he saith he was of John Lilburne's Jury, and found him not guilty. But refused to answer to any other questions; saying, 'He was called to serve his country in this particular; and that he had done it according to the best of his understanding: acknowledged the

'meeting of the Jury at the Windmill Tavern yesterday morning.'

*Gilbert Gayne*, of Dunstan's in the West, grocer: He saith he was one of John Lilburne's Jury, and found him not guilty. And he being asked what the issue was, he acknowledged that he was indicted for felony, for coming into England. But saith, 'That the Jury did find as they did, because they took themselves to be Judges of the law, as well as of the fact: and that although the Court did declare they were Judges of the fact only, yet the Jury were otherwise persuaded from what they heard out of the law books.' He confesseth he himself did at first differ from the Jury, but was convinced by their reasons. He confessed the meeting of the Jury.

*Griffith Owen*, of Bishopsgate Ward, brewer: He acknowledgeth he was of lieutenant-col. John Lilburne's Jury, and that they found him not guilty. 'Because he was not satisfied that the prisoner was the John Lilburne mentioned in the act; and that he had never seen John Lilburne before that day, nor was he solicited in his behalf by any person.' He acknowledgeth the Jury met yesterday morning at the Windmill Tavern; but made no agreement what answer to make the council.

*The following Examinations were published in the Year 1653, not im- probably before this Trial took place, with the design of facilitating the Conviction of Lilburne:*

SEVERAL INFORMATIONS and EXAMINATIONS taken concerning Lieutenant-Colonel JOHN LILBURN, shewing his Apostacy to the Party of Charles Stuart: And what his Intentions are in coming over into England out of Flanders.

▲ Perfect NARRATIVE of what passages I observed from lieutenant-col. John Lilburne, and others, touching him in Flanders.

About the beginning of July, 1652, I was employed on the behalf of this Commonwealth into Holland, and Flanders, and landing at Ostend, I found a number of very desperate enemies of all sorts to this Commonwealth, with whom I observed lieutenant-col. Lilburne much to associate; and having observed before his restlessness of spirit, and that his late actions had rendered him so obnoxious to this Commonwealth, that incurred an Act of Banishment upon him self; I therefore applied myself to find out what his endeavours at present drove at: And to this purpose it was not long before I found that lieutenant-col. Lilburne had been very conversant with captain John Bartlet, and to whom he had imparted several secrets, as he himself called them, the said captain John Bartlet who told me, that there were many delinquents and Cavaliers of dangerous consequence that escaped out of England to that town of Ostend, whom lieutenant-col. Lilburne no sooner heard

of, but came to them, and in as gross a manner as he could, did endeavour to lessen the justice, honour, and power of this Commonwealth, and this in so vile and scurrilous language, as produced rather a wonder than an affection in its chiefest adversaries, as was several times confessed to me by several of them with whom he conversed. Captain Bartlet, as well as several others further told me that lieutenant-col. John Lilburne kept great correspondencies with several people in England, and that one Sanctus, Mr. Priin's man, he conceived did send away his letters, for which purpose the lieutenant-colonel every Saturday came from Bruges to Ostend, and having wrote them, on the Monday following he returned, as I myself often observed him to do. Not long after I heard col. Charles Lloyd, sometimes called sir Charles Lloyd, engineer-general, and quartermaster-general to the late king, captain Luke Whittington, agent to Charles Stuart, captain John Titus, captain John Bartlet, say that lieutenant-col. John Lilburne had proposed several times, sometimes to the duke of Buckingham, sometimes to sir Ralph Hopton, sometimes called the lord Hopton, and some-

times to col Charles Lilburne aforesaid, and several others, That if any of the forenamed persons would procure him 10,000*l* he would destroy the lord general Cromwell, the parliament, and the Council of State that now sitteth at Westminster, and sett *l* Charles Stuart (king of England as he called him), in his throne in England, or he would have a piece of him nailed upon every post in Bruges. In answer to which, *sa* Charles Lilburne is aforesaid told me, that if he thought the lieut col could perform what he proposed to them, it would be hard but they would procure so much money upon so good a score. I observed further fr in lieut col John Lilburne, and others who told me of his actions, that the lieut col did not only move with much violence and earnestness, shewing which way he would bring this his proposed design about, but went from person to person who so reputation he thought could procure so much as he proposed fr (for the advancement of this his declared design), and whose inclinations and opinions were most suitable to further him in such employments.

Not long after this lieut col Lilburne took up a presumption that I was employed by the Commonwealth of England, which he averred he was certified of by several of his friends (and named one col Layton as one of his friends who now stands exiled from this Commonwealth, and was secretary to the Council of War to Charles Stuart in Scotland). The lieut colonel hereupon went to the duke of Buckingham, *sa* Ralph Hopton as aforesaid, col Charles Lilburne as aforesaid, major general Diol, a Scotchman in that time and invaded England with Charles Stuart, and had lately broke out of the Tower, Dr Nicholas, Judge of the Admiralty Court in Dunkirk for Charles Stuart, capt Luke Whittington, agent for Charles Stuart, capt John Titus, brother to capt Titus the professed enemy of this Commonwealth, capt John Bartlet, and what other Cavaliers he could meet with, and told them that I was a spy for the Parliament of England, and warned them to beware of me. For he had already spoiled two of the parliament spies, and would in a short time ruin me also. And to this purpose (as capt Titus and several others afterwards told me), the lieut col went to Plying dol, and the said col Layton, where they way laid me an hour and a half to have ruined me, as lieut col Lilburne often said he would, though it pleased God in his mercy not to let me come that day from Ostend, when I knew nothing of the design against me. Not long after this I conversed with some of the lieut colonel's associates, and told them I wondered much why lieut col Lilburne should offer thus to abuse his own countryman in another nation, in so high a nature as he had done me, since I never did him hurt, and repeating what I had heard from others, that lieut col Lilburne should say of me, It was soon told the lieut col Titus, who presently presumed that it was capt John Bartlet that had told me, and from that time forward he sought with more violence

than before to have me murdered, as too plainly appeared by his alter-actions, and by two witnesses that I examined by order, who gave it under their hands, and offered to depose it, That one of the lieut colonel's conspirators against me, often told them, that the lieut colonel and this other conspirator had hired a man to have stabbed me, because I was employed an intelligencer for the Parliament of England, and had not I escaped speedily away, then business had been effected upon me. But I understanding the lieut colonel's practices against me, resolved on my voyage for England, which being understood by the lieut col some more men besides himself with weapons way-laid me and capt Bartlet (as we were to take boat for Ostend), that so he might have executed what he had formerly spoke against me, which was for this purpose (as some afterwards confessed to me, who had it from his own mouth), that his carriges in Flanders should not be declared to the Parliament of England, for said he, as they have banished any person, so they will sequester my estate. But it pleased Almighty God this second time by his providence to protect me, in giving a resolution not to go till the morrow, which the lieut col perceiving, supposed himself to be discovered, and returned into the town, and suddenly thereupon came on capt Bartlet, an Irish Rebel, to inquire for capt Bartlet, with the said capt Whittington, who were both privy to the design, and discovered it, after God in his mercy had prevented them. By this time it was noised up and down the city, inasmuch that some of the citizens offered me their assistance, which some of them afterwards gave me, and brought me to the boat the next day, at which time the lieut col with some more of his conspirators lay behind a hedge, near the way that I was to pass, and thus blessed be God I escaped his hands.

A little before the lieut colonel had discovered that capt Bartlet informed me of whatsoever the lieut colonel told him, capt Bartlet said that he had told him that he, the lieut colonel, had much intercourse and correspondence with Holland, by which means, he would ruin me, in causing me to be apprehended, because (as he said) I was a spy for the Commonwealth of England, which capt Bartlet giving me timely notice of, hindered my journey, and so a third time I escaped his malice, which was not against me any further, than as he said I was a spy for the commonwealth of England.

ISAAC BERKENHEAD.

The Examination of Capt John Titus, concerning Lieut Col John Lilburne, Sept. 22, 1652.

The Examinant saith, that the said lieut col John Lilburne proposed to the lord Hopton, that if he would procure him 10,000*l* he would destroy the Commonwealth of England in six months, or he would have a piece of him nailed upon every post in Bruges. The lord Hopton told the said Lilburne, that it could

not be so facile a thing, though he believed it would be done, but not in so short time : to which the said Lilburne replied, my lord, I will shew you how it shall be done ; give me but the monies that I propose for, and I will have my agents (for I have enough of them) that shall give me a continual account of all the Commonwealth of England's proceedings : and by those agents I will spread my papers abroad that shall instigate the people against the parliament, and so by that power I have already and that power that my agents shall make by working upon the people, I will destroy this Parliament, the Council of State, and the lord general Cromwell, in half an hour.

This Examinant further saith, that George Villiers, duke of Buckingham, sent for the said Lilburne to enquire which way he might make his addresses to the parliament for his peace, but the said Lilburne advised the duke from it, for that the lord general Cromwell and the parliament were so false a company of rogues, that it was not safe for the said duke to put his life into their hands : and further said, that if the king (to wit Charles Stuart) would but observe what he the said Lilburne had set down in some papers, which shew the reason why the said Lilburne would not be a cavalier, and reform but them, he might easily do his business and sit in his chair. But the said duke spurred him the said Lilburne on to his first request of advising him which way he might make his peace with the parliament. But the said Lilburne would not hear of that, but advised the said duke to the contrary, and further telling him the said duke, that they had hitherto (naming his excellency the lord general Cromwell and the parliament,) broken all their engagements, and particularly the lord general, to me, who promised with all the protestations in the world, and by whatever else was sacred, that so soon as the general had done his business in Scotland, he would then answer all their expectations and desires (meaning the desires of that party which are called Levellers) and further promised that Magna Charta should be set on foot, and all the privileges of the people fully answered, according as they the said Levellers had in several papers of theirs proposed.

But the said duke still drove the said Lilburne off, desiring him the said Lilburne, that if he had any interest or party in England (as he the said Lilburne boasted much of) that he would use it on the duke's behalf ; for, said the said duke, could I procure a pass to day to come into my native country, I would fling myself into the lord general and parliament's hands to-morrow ; For, said he the said duke, so far as I have assisted the king hitherto, hath been but to quit myself of ingratitude, since my family hath been raised by the king and his ancestors. To which the said Lilburne replied, My lord, since you are so resolved, I would advise you not to stir in such things as yet, for that there is expected a new representative, at which time he the said Lilburne doubted not

but he should be able to do him the said duke service, for he the said Lilburne should then be as powerful as any in the representative. But the said duke desired that if he the said Lilburne had any interest that he would use it forthwith, for that he had a desire to be reconciled to his country. To which the said Lilburne replied, My lord, the General and the parliament are so false a company of rogues, that it cannot be safe for you to put yourself in their hands.

This Examinant further saith, that at this same time the said Lilburne proposed to the said duke, that if he the said duke could but procure him 10,000*l.* he the said Lilburne would have a piece of him nailed upon every post in Bruges, if he the said Lilburne did not overthrow and destroy those damnable villains in England, I mean, said he the said Lilburne, the lord general Cromwell, the Parliament, and that monstrous Council of State. To which the said duke replied, I pray you, Sir, let me hear which way you will do this. The said Lilburne replied, My lord, I will tell you how, first, I will set my press on work (for which purpose I have bought one with a letter at Amsterdam, which cost me 30*l.*) and then I will send my papers over into England, which by my agents shall be spread all over the nation, and by my agents (for I have enough) my papers shall be brought into the army there, where I have double interest, and now every trooper begins to understand his own privilege, and so soon as these papers are spread, they will fly in the faces of their officers, so that with the help of my particular interest, the soldiery shall do all themselves, and I will do nothing but sit in my chair, and use my pen. To which the duke replied, Sir, you may observe that in all your attempts the General outwitted you, and broke your business in the bud ; besides, you may see that on all occasions the soldiery hath been obedient unto his officer, so discreetly hath the general ordered his army. Why then, saith the said Lilburne, I perceive you take the general for a wise man. Yes, said the duke, let the world read his stories and they will find him so. No, said the said Lilburne, I know him to be otherwise, for heretofore all his business was managed by Igeon, and is since by others : And for the General himself, he is as false a perfidious false-hearted rogue as ever lived in the world. And I know no reason why I should not vie with Cromwell, since I had once as great a power as he had, and greater too, and am as good a gentleman, and of as good a family. To this the said duke replied, Sir, if you have any interest in England, as you say you have, I pray you to use it for me, for I have a great desire to be reconciled to my native country. Then the said Lilburne perceiving he could not move the said duke to any thing in relation to his the said Lilburne's proposals and persuasions, he the said Lilburne promised to use his interest in England on the said duke's behalf, to which purpose the said Lilburne wrote to some in England, but to whom the

Examinant knoweth not. But withal the said Lilburne advised the said duke not to stir in it yet.

This Examinant further saith, that the said Lilburne said that there was one Rogers that was a rogue, for that he was a spy for the Commonwealth of England, and therefore he the said Lilburne would ruin and destroy him: And that he the said Lilburne had discovered several that were employed in that way before. And after this apprehending the said Rogers was to come towards Bruges, the said Lilburne lay an hour and a half waiting for the said Rogers's coming, at Placingdell, three English miles from Ostend, which was his way to Bruges.

• The Examinant further saith, that there was one Mr. Lambert, (a man that keeps much company with the said Lilburne, who took the said Lilburne's house for him in Bruges,) that said that lieutenant col. Lilburne told him the said Lambert, that he the said Lilburne had found a rogue out, one Rogers, that was a spy for the Commonwealth of England. The said Lambert further said, with another Papist, commonly called by the name of Paracelsus, as he the said Lambert was, that if the said Rogers had staid two days longer in the town, he the said Rogers should never have gone thence alive, for that they would have had the said Rogers knocked on the head.

This Examinant further saith, that the said Lilburne said, that the lord general had abused major general Lambert, who, when time served, would be revenged on the General.

JOHN TRUS.

The Examination of Capt. John Bartlet, concerning Lieut. Col. John Lilburne.

About the 20th of July, 1652, in an hour in Placingdell, three miles from Ostend in Flanders, lieutenant col. John Lilburne did propose to col. Charles Lloyd, sometimes called so Charles Lloyd, quarter-master general, and engineer general to the late king in the late wars in England, and to capt. John Bartlet, this Examinant, and capt. Luke Whittington, agent for the king of Scots, that if he the said Charles Lloyd, or any of the aforesaid persons, would procure him 10,000*l.* he the said Lilburne would settle the king in his throne (to wit Charles Stuart) in England. And this Examinant further saith, that at the same time the said Lilburne said, that the king (to wit Charles Stuart) should never come into his throne, but by his the said Lilburne's means, and that he further said, the said Lilburne did oppose the late king's death more than any man in England besides then durst do. And this Examinant further saith, that the said Lilburne did then boast much of the hugeness of his own party, as he the said Lilburne called them, which he had in England.

This Examinant further saith, that there was a rumour in Flanders, that his excellency the lord general Cromwell was made lord admiral of the seas, and that he was to go to sea in the

ship called the Sovereign, the which when lieutenant col. Lilburne heard, he was very angry, saying, That the General had more commands than ever Julius Caesar had, but it is no matter, said he, let him go to sea when he will, I will warrant him he shall never return; or words to this effect.

This Examinant further saith, that lieutenant col. John Lilburne said, that Mr. Rogers was a spy for the Commonwealth of England, as he was told by lieutenant col. Layton. And further said, that if he the said Lilburne knew it certainly, he would destroy the said Rogers; And further said, that he had warned the duke of Buckingham, the lord Hopton, doctor Nicholas, Judge of the Admiralty Court, for the Scotch king in Dunkirk and several other cavaliers, that they should not trust him, and the said Lilburne further said, that he had spoiled two of the parliament's spies already, and would do the like to this; And further said, that he the said Lilburne, and the said col. Layton (supposing which way the said Rogers would come) lay an hour and a half waiting for him, but though he missed him then, he would ruin him afterwards; and at this time the said Lilburne commanded this Examinant to keep it secretly, and to beware of him the said Rogers. After this it appeared that the said Lilburne had intelligence that this Examinant had discovered to the said Rogers what had formerly past betwixt the said Lilburne and this Examinant as secrets, and what is related in this paper; and understanding the said Rogers and this Examinant were to go from Bruges to Ostend, and so for England, that none of the said Lilburne's actions might be declared there in England to the parliament, which the said Lilburne feared, he the said Lilburne with certain others that he had procured with their weapons, as pistols and swords, way-laid the said Rogers and this Examinant, but by Providence the said Rogers resolved not to go that day, and prevailed with this Examinant to stay till the next, which this Examinant did, though they never heard any thing of the conspiracy against them. But their stay being understood by the said Lilburne and the rest of his conspirators, one that was privy to the conspiracy, capt. Ignatius Brett an Irish rebel, with capt. Luke Whittington, came to the house where this Examinant and the said Rogers were, and this said Brett sent for this Examinant, and asked this Examinant what was the reason why this Examinant continued not his resolution for his journey. This Examinant answered that by a friend's advice he staid till to-morrow. The said Brett replied, you may thank God you went not down to the boat, for had you gone, ye had been harder put to it in fighting than ever you were in your days; whereupon this Examinant asked the said Brett, by whom? the said Brett answered you shall excuse me, I will never be a Traitor to them so long as I live, but you know them all as well as I. Then the said Whittington being in company said, I am glad with all my heart you went not down, for the persons were

Lilburne, &c. who were all well furnished for this purpose. With that the said Brett said, gentlemen, you are my witnesses that I discovered them not. And this being noised abroad in the town, a merchant of the town offered the said Rogers if he pleased he would cause them all to be clapped up, which the said Rogers refused, providing themselves against them.

This Examinant further saith, that before this, the said Lilburne told him that he the said Lilburne had good intercourse with Holland, and would cause the said Rogers to be surprized there, for that he was a spy for the Commonwealth of England.

This Examinant further saith, that the said Lilburne was reading a Declaration of the Parliament of England touching the war with the Hollanders, the said Lilburne professed, that were the parliament had so honest as they were wise they were the best people in the world. But the Dutch were fools: for had he their cause in handling his said cheek the parliament in two words; which should be in telling them of their promise made to the late king, in preserving his person, honour, crown and dignity, and how false they have been to them all.

JOHN B. BULLER.

For my dear and Mr. Lilburne,  
Lilburne, these with haste, fast post to deliver in London

My Dear Love; I have been, and yet am in a longing condition to hear from thee, but I confess by this post I have nothing to expect from thee, more than to hear that thou art safely got amongst friends at London, where I hope your joint activity will be such according to my full instruction. To you and my true friend that went with you, as that you will procure my expected pass so speedily as to send it me, or a copy of it, with my friends, encouragement, to Dunkirk, the next post, where by God's assistance I will be on Sunday next at night; and if it come, it is more than probable I may come to Dover that packet (or certainly send you word when by God's gracious permission I shall) for I long to see London, and if I come so suddenly, I shall leave all my things behind me in the care and possession of Mr. Lambert, for which I can either come over myself again, or send for them. One reason that moves me to make the more haste, is because if I come over, and find things in a handsome way to my liking. I have something of very great consequence to say speedily to such a great faithful man as I shall trust, and if I come, I shall stay at Dover a day, two or three, and by the post let you know I am there, and expect you to send me a horse to Canterbury, where at the post-house I intend to lie the first night, and shall not stir from thence till I receive a horse from you.

But if our new Council of State, or governors, will not cast a favourable eye upon you, but either deny or delay you a pass, so that the next Post I hear not of it. I shall then take it for granted that major general Harrison, being,

as I hear, one of your new Council of State, is my principalest, and grandest adversary, and accordingly I shall only take arise from what I was informed he said in the house at my banishment, and what he said publicly at Allhallows (when from Dover I sent my letter to the people that meet there) to write him such a letter (which already in my brain I have contrived) as will no way please him, let the issue be what it will. I have writ again to major general Lambert (who I hear is president of your new council) and enclosed him one of my printed Epistles, in Dutch and English, I have also writ to col. Bennet, which you may read the copy of on the other side.

So with my hearty and true love and affection presented to thee and all my friends in the bulk, longing above measure to hear from thee, I commit thee and my poor babes, as my own soul, to the protection of the Most High, and rest thy faithful and loving husband. I. L.

I have herewith enclosed one of my printed Letters, which I hope are before now printed at London; I have already sent two copies of this two several ways for fear of miscarriage. I am in haste, and cannot read this over, the post is going, therefore mend the faults if there be any.

The Information of Rich. Foot, concerning  
Lieut. Col. John Lilburne.

Being in Flanders about three months since, I came acquainted with lieut. col. John Lilburne, where among other discourse I asked him why he did not apply himself to learn some language, he being then unable to speak to any of the country without an interpreter; he answered me, that he thought himself too old to learn languages, and said he had work enough to set his adversaries by the ears. Few days after I came into England, and about seven weeks or two months since returning there again he told me that his wife had been there, and that he had sent her into England with a letter to Cromwell, a copy of which he gave me in print, and that he expected a pass to go into England, he would not stay a day after it came, though he hired a boat of purpose; then one Parker a cavalier taking his leave of him, asked if he might not write to him, he answered, no, I will receive no letters from Mr. Parker; then he asked if not by another name, to that he assented. So Lilburne went to Dunkirk with great confidence that he should receive his pass there; and few days after one Jamot, which had been a lieut. col. for the late king, came post from Paris, staying but one night at Autwerp with his wife, and came to Bridges, and not finding Lilburne there, came to my lodging early in the morning, and asked me if I thought he was gone for England, then presently went away to the boat, to which I hastened, and went with him to Dunkirk, and often by the way he asked me if I thought Lilburne was gone, speaking as if he extremely feared it; as soon as he had taken up his lodging in Dunkirk he went to seek

Lilburne, and finding him in the street delivered him a letter, and had some private discourse with him; a while after coming to them at a tavern, Lilburne desired me to go to Bridges for a letter directed to him from sir Henry Denix, wherein he said was a pass for the duke of Buckingham to come into Flanders, and to that purpose he gave me a letter unsealed, directed to Mr. Tho. Lambert, at Bridges, desiring him to enquire for the said letter, and deliver it to me, which was accordingly done, at my being at Bridges the aforesaid Mr. Parker's wife delivered me a letter directed to me of some such like name, desiring me to deliver it to Lilburne, saying it was for him, I asked why it was so directed, she said he well knew the meaning of it; at my return to Dunkirk I received a letter from Jamot, wherein he wrote they were gone to Calais to meet the duke of Buckingham, and desired me to send the aforesaid letter with the pass in it to Graveling, and within two or three days after returned to Dunkirk, being Sunday the 29th of May, and Lilburne and Jamot being at a tavern called the Conserge with one capt Whittington and col. Layton, both of the king's party here in England, and two merchants, desired me to send one for his letters to the Post house, upon which one of the company asked him what he would say if this pass came not, he said that if my pass come not, and that I find that it is Cromwell that hinders it, as it must be, for it lies in his power, I will either kill him myself, or send one to do it; then one of the merchants asked him how he could do such a thing with conscience, he answered told not me of conscience in this case, for if that I am banished without law, conscience or equity, and deprived of my natural air to breathe in, which is every man's birth-right, (with such like expressions) I may justly right myself if I can; if I would take a hare or a deer, I ought to give him fair play, because they are beast of game; but if a fox or wolf, I may use what device I can to kill him; so if Cromwell keep himself above the law, that I cannot have my right by the law, I may kill him how I can. Then presently his letters came, and after he had read them, and saw his pass was not come, he said, I am resolved to have one fling more at Cromwell. Further he said, that Cromwell hath been an atheist this seven years, and that his design is and hath been to make himself king; so having been there together three or four hours, expressing great confidence in one another, I and this informant left them. The next day Lilburne and Layton went again for Calais to the duke of Buckingham, and were not returned when I came for England, which was eight days after.

RICHARD FOOT.

The Information of John Staplehill, of Dartmouth, taken June 20, 1653.

This Informant saith, that coming through France in his way to England from Spain, he lodged at Calais, upon Friday was sevennight at the Silver Lion, where was the duke of Buckingham, and likewise some colonels of the late king's army, and with them was lieut. col. John Lilburne and his wife, that the Informant being in the next chamber, he heard them discourse of the lord general Cromwell, but could not understand distinctly the particulars of their discourse, but did apprehend he spake very slightly of the General, hearing him say these words, Cromwell, what can Cromwell do? And this informant did observe, that the said duke, cavaliers and Lilburne were very familiar together, and Lilburne and his wife dined and supped constantly with them; that the Informant being bound for England, hired a boat upon Sunday for his passage, and being upon the key, a boat man came to him, and told him that he need not hire a boat, but might go over with three gentlemen that were going over, meaning lieut. col. Lilburne and two cavaliers in his company, and the boatman went to them to ask them, whether this Informant might not go with them, but the said Lilburne refused to admit it, and said he should not go with them. And he afterwards hearing that the Informant had hired a boat himself procured the duke to go to the governor of Calais to stop the Informant's going over at that time, and the Informant being sent for by the governor to that purpose, the Informant met the said duke there, and was then prohibited by the governor, not to depart till he had leave, so the said Lilburne went away that night about midnight, with his wife, and two cavaliers, whereof one was a colonel, and embarked all in one boat, the duke accompanying them to the water side.

That the next day about two o'clock, the governor gave liberty to the Informant to come away, who arrived at Dover at seven o'clock the same night, where he heard Lilburne arrived in the morning before, and this Informant coming through Canterbury in his way to London, staid at the Three Kings, the post-house, to dine, and there asked whether lieut. col. Lilburne past that way, and one of the drawers told him he did, and the Informant thereupon saying, he was a great enemy to the General, the drawer answered, that he did express as much here, saying, he came into England without any pass, and that he did not fear what Cromwell could do to him, being as good a man as he; and this was upon Tuesday last. He likewise boasted, that he had caused three gentlemen to be stopt at Calais, which was the Informant, a Spaniard, and an Englishman, who came all in company together.

JOHN STAPLEHILL.



194. Case of the PRIVILEGES of EMBASSADORS, being the Proceedings against Don PANTALEON SA, Brother of the Ambassador from the King of Portugal\* to England, for Murder in a Riot in the New Exchange : 6 CHARLES II. A. D. 1654. [Sommers' Tracts, 3 Coll. vol. 2. p. 65. Whitelocke's Memorials. Zouch's Solutio Questionis de Legati Delinquentis Competente Judicio. Oldmixon. Guthrie. Carte. Burnet. Thurloe's State Papers. Cotton's Posthuma.]

NO circumstantial account of the Trial in this Case has been obtained, and the accounts which are extant of the Case itself do not agree with each other so exactly as was to be wished. Nevertheless, as the transaction has been discussed by writers both on the Law of England and on the Law of Nations, and as our history and our law-books furnish but very few incidents and very little learning relative to this head of Public Jurisprudence, it has been thought right to present the best representations of the Case which have been found, together with some other documents, which contribute to throw light on the matter. The statement which is adopted by Mr. Ward in his Inquiry into the Foundation and History of the Law of Nations in Europe, and in speaking of which he says, "one of more authority can hardly be met with," is given in the Third Collection of the Sommers Tracts, vol. 3, p. 65, as follows :

**A RELATION OF THE MUTINY ON TUESDAY THE 22d OF NOVEMBER, 1653, IN THE NEW-EXCHANGE, OF THE PORTUGAL AMBASSADOR'S FOLLOWERS, &c.**

"This night was a great Mutiny at the New Exchange in the Strand, such as had scarce ever been the like. The business, upon the best information that I can have from those who were present in part of the business, and have conferred with others upon the whole, is thus :

"On Monday night, which was the night before, three of the Portugal Ambassador's family, whereof his brother was one, being at the New Exchange, they talking in French, spake of such discourse of transactions of some English affairs, which col. Gerhard, sir Gilbert Gerhard's brother, understanding the French tongue, hearing, told them very civilly, that they did not represent the stories they spake of right ; whereupon one of the Portugals gave him the be : Upon that they began to jostle, and all three fell upon col. Gerhard, and threw him down, and got upon him ; but though he be but a little man, yet he threw him off that was upon him, and so was bustling with him a good while : There were some gentlemen there, but knew not who it was they so assaulted, and so never meddled with

them ; and yet one of the Portugals with his dagger stabbed col. Gerhard in the shoulder, and hurt him sore : But afterwards Mr. An-frazer spake to the Portugals, that it was not civil nor handsome for so many to fall upon one, three to one being very unequal, and endeavoured to pull one of them off, and so to persuade them to cease, and thereby he came to see who it was they had assaulted ; who finding it to be col. Gerhard, which he knew well, and seeing them still pursue their rage upon him, he drew to relieve him ; and after some bustle the Portugals went away, one of them having a cut upon his cheek : And that night afterwards near twenty of their attendants came to the Exchange, and would have quarrelled with any body ; and some cuffing there was by some, but not much more that night, for it was late, and they returned home.

"On Tuesday night, came about fifty of the Portugals again to the New-Exchange, of which number were the Ambassador's brother, and two knights of Malta, and they were led on by a Portugal in buff, whom they call Captain, one well known to some in the Exchange, and they had generally double arms, all or most part of them swords and pistols, and coats of mail or armour, some one thing, some another, to preserve their bodies from swords entering upon them.

"They had also two or three coaches that brought ammunition, in which were hand-granadoes, and bottles, and some little barrels of powder and bullets, and other necessaries, if occasion was. They had also some boats ready to attend them at the water-side, if occasion was for them also.

"Thus they came with a resolution to fall upon every English gentleman they should find in or about the Exchange ; and entering in with this equipage, the people were exceedingly frightened. For first came in the Captain in the buff, who led them, and after him the Portugal Ambassador's brother, and the knights of Malta, and so the rest, all with drawn swords, and in so furious a posture, as if they intended to kill every body they met with that stood before them.

"Hereupon the people fled into the shops in the Exchange to shelter themselves, and all that did not so they fell upon, though no man gave them the least affront, yet they pistolled and cut, and wounded many.

"Mr. Greneway, a gentleman of Gray's Inn, son to the lady Greneway, was there

\* Whitelocke in his Memorials for September 1652 notices the unusual state with which the Ambassador from Portugal came to present his Credentials to the Parliament.

with his sister, and a gentlewoman whom he was to have married, who desired them two to stand up in a shop, where he saw them safe, and they would have had him to have staid with them, but he said he would only go see what was the matter; but he was no sooner parted from them,\* but immediately the word being given by the Portugal Captain in buff, which was *Safa*, which was the word when they were to fall on. Without any affront offered towards them, one of them pistolled him, and shot him in the head, and he is dead of his wounds; and many others they have dangerously wounded. Col. Mayo had twelve upon him at once, yet drew his sword, and fought with them as long as he was able to hold his sword in his hand, which being cut, he was forced to let his sword fall, and then they cut and wounded him in many places. Mr. Thomas Howard, Mr. Carter, and divers others, were wounded passing by.

"The Horse at the Meuse had taken alarm before they returned, and returning home, passing by the Meuse, some of the horse moving towards them, some of them discharged pistols towards the horse, and the rest run home to the Ambassador's house; but the horse-guards took some of them, and carried them into the Meuse, and sent word thereof to the Lord-General; and a party of Horse pursued them and beset the Ambassador's house.

"And commissary general Whalley sent in to the Ambassador, acquainted him with this horrible attempt and bloody murder of his followers, and shewed him his men they had taken prisoners, and required the chief of the rest of them to be delivered into the hands of justice, which the Ambassador was loth to do. But seeing he could not baffle them, to stop the course of justice in so horrible a bloody business as that had been, he delivered up his brother and one of the knights of Malta, and some others such as they had then information was chief, and promised to secure the rest to be forthcoming any of them when they should be demanded. After which the Ambassador made his address to the Lord General, and chiefly for his brother; but his Excellency told him that it did concern the public, and therefore his addresses must be to the Parliament and Council of State. It is such a horrible business that his Excellency would not meddle with him in it. The Portugals that are in custody are prisoners at James's, and the business is under examination before the Council of State."

In the same volume is also printed the Order of the Council of State as follows:

"By the Council of State; The Council of State taking notice of the tumultuous and barbarous actings at the New Exchange in the Strand, in the county of Middlesex, upon the 21st and 22d of November last past, the same being accompanied with the drawing of swords, discharging of pistols, and such other high misdemeanors as are scarce to be paralleled by

the actings of any persons living under the protection of a civil government, and which, in the effects thereof, produced not only a very great and notorious violation of the public peace, but also the murdering of one, and the assaulting, wounding and affrighting of many other of the people of this nation, pursuing their ordinary callings and occasions. And for as much as the said Exchange is a place of public resort and trade; the Council have therefore thought it necessary hereby to declare their resentment of those proceedings, and their just displeasure against the same. And as they intend vigorously to prosecute the offenders, so, to the intent the like evils may be better prevented in time to come, they do hereby strictly require and charge, That no person or persons, of what quality soever, do presume at the said Exchange, or any other like public place, to occasion, encourage or abet, any tumultuous meetings, or hazard a breach of the civil peace, or drawing there, or in any other such place, any sword or other weapon, discharging, presenting, or bearing any gun or pistol, or firing of powder in granadoes, or in any otherwise whatsoever. Of which command, it will be expected that all persons whatsoever take notice, and demean themselves accordingly, upon peril of being reputed, and dealt withal, as disturbers of the public peace, whereof a very strict account shall be taken: And all justices of the peace, and other public ministers, are required carefully to perform their duties in this behalf; as also, to use their utmost endeavours to prevent and restrain all unmannerly and unhandsome demeanors of such as shall resort to the said Exchange, that so no just cause of offence may be given to sober minds, nor any thing there acted dishonourable to religion or the nation."

The following detached Narrative, extracted from the candid and careful Whitelocke, is somewhat more circumstantial.

Nov. 21st, 1653. A great insurrection and tumult was at the New Exchange, between the Portugal Ambassador's brother and some of his company, and col. Gerrard\* an English gentleman, who hearing the Portugueses discoursing in French of the affairs of England, told them in French, That they did not represent those passages aright. Whereupon one of the Portugueses gave him the lye, and they all three fell upon col. Gerrard, stabbing him in the shoulder with a dagger, but being rescued out of their hands by one Mr. Anthuser they retired home, and within one hour returned with 20 more, armed with breast-plates and head-pieces, but after two or three turns not finding Mr. Anthuser, they returned home that night.

Nov. 22nd. The Portugal Ambassador's bro-

\* This col. Gerrard or Gerlurd, was, on a charge of plotting against Cromwell, executed on the same day with Don Pantaleon Sa. See his Case, in the present volume, No. 195.

ther returned again to the New Exchange with his company, and walking there they met with col. Mayo, whom they supposed to have been Mr. Anthuser, and shooting off a pistol as a warning, 50 Portuguese came in with drawn swords, and leaving some to keep the stairs, the rest went up with the Ambassador's brother and fell upon col. Mayo, who gallantly defending himself, received seven dangerous wounds, and lies in a dangerous condition, and then they fell upon Mr. Greenway of Lincoln's Inn, who was walking with his sister in one hand and his mistress in the other, and pistolled him in the head, whereof he died immediately. They brought with them several jars filled with gun-powder in their coaches, stopped with wax and filled with matches, intending, as it seemed, to have done some mischief to the Exchange had they not been prevented. The Parliament Horse at the Mews taking the alarm apprehended some of the Portuguese, and the rest of them ran to the Ambassador's house, whither col. Whaley pursued them and beset the Ambassador's house with his horse, acquainted him with the murder and insolency committed by his followers, shewed him some of them whom he had taken prisoners, and required the chief of the rest to be delivered up to justice. The Ambassador insisted upon his Privilege as Ambassador, but seeing nothing else would satisfy, he at length delivered up his brother and one of the knights of Malta and some others, and promised to secure the rest to be forthcoming; after which the Ambassador made his address to the Lord General\*, and chiefly for his brother, but the General told him the business did not concern the public, and therefore his excellency's address must be to the Parliament and to the Council of State.

Nov. 23. The brother of the Portugal Ambassador and his company who committed the murder at the Exchange, were examined by the Lord Chief Justice Rolles; and the Ambassador's brother, and four others, were committed to Newgate in order to take their trial.

Dec. 13. The Portugal Ambassador's brother made an escape out of Newgate, but was retaken. The Council of State published a Declaration against the late Tumult at the New Exchange, and forbid all persons of what quality soever to do or abet the like in any public place of trade or resort, upon pain to be dealt with as disturbers of the public peace, whereof a strict account shall be taken; and all officers to perform their duty for apprehending such offenders, and to prevent the like tumultuous actions.

Jan. 8, 1654. The Trial of the Portugal Ambassador's brother put off till the next sessions upon the petition of the Portugal merchants.

April 3d. The Portugal Ambassador had audience of the Lord Protector.

\* Cromwell, who did not assume the office of Protector, till after the abdication, in the following month, of the parliament which he had himself constituted in June preceding.

May 12th. The treaty with Portugal is not yet come to any agreement. The business of his brother yet sticks. His highness hath now ordered his Trial by a special commission of Oyer and Terminer. The Commissioners are, my lord Rolles\*, justice Atkins, serjeant Steel, Dr. Zouch, Dr. Clerk, Dr. Turner, Dr. Blunt, Mr. Lucy, and Alderman Tichburn.

July 5th. The Portugal Ambassador's brother, and two other Portuguese were tried before commissioners of Oyer and Terminer in the King's Bench. He pleaded that he was not only the Ambassador's brother, but had a commission to himself, to be Ambassador when his brother should be absent, and that by the Law of Nations he was privileged from his Trial, and he demanded counsel. The point of Privilege of Ambassadors by the Common Law, and by the Civil Law, and by the Law of Nations, was long debated by the Court, and the Lord Protector's Council, and the result of the court was, That by all those laws the proceedings in this case were justified. And that no counsel could be allowed to the Ambassador's brother in Matters of Fact, but if in the proceedings of his Trial he should desire counsel as to Matter in Law, it should be allowed him. After much persuasion he and the rest pleaded Not Guilty, and to be tried by God and the country, and a Jury was called of half English and half foreigners. Adjourned till the next day for their Trial.

July 6th. The Portugal Ambassador's brother was again brought before the Commissioners of Oyer and Terminer in the Upper Bench, and tried by a Jury of six denizens, and six aliens. He pleaded his ignorance in the laws of England, and desired to have counsel assigned him, but the Court told him that they were of counsel equal to him as to the Commonwealth†, and upon hearing of the Wit-

\* Whitelocke (Mem. 363), styles Rolles "a wise and learned man."

† This is a more correct expression of the maxim that "the judge shall be counsel for the prisoner" that is, according to Blackstone (who calls it, "when rightly understood, a noble declaration of the law") "the judge shall see that the proceedings against the prisoner are legal and strictly regular," or as Mr. Christian expresses it, "the judge shall take care that the prisoner does not suffer from the want of counsel." The phrase that "the judge is counsel for the prisoner" is very apt to mislead, and we shall not therefore be surprised at the exclamation of a culprit who, when he heard his judge, presently after saying, that he was counsel for the prisoner, put to a witness a question directly tending to elicit proof of the prisoner's guilt, cried out, "Alas, my lord, if you were my counsel, you would not ask that question!" The following anecdote reported by Mr. Christian [note (8) to 4 Blackst. Comm. 5th ed. 355] shews that the common phrase has, once at least, misled even a judge. "Upon a trial for the murder of a male child, the coun-

nesses, the jury found the Ambassador's brother and four more Guilty of Murder and Felony. The Lord Chief Justice Rolles gave Sentence against them to be hanged, and a day

sel for the prosecution concluded his case without asking the sex of the child, and the judge would not permit him afterwards to call a witness to prove it; but, in consequence of the omission, he directed the jury to acquit the prisoner. But, to the honour of that judge it ought to be stated, that he declared afterwards in private his regret for his conduct." Mr. Christian rightly states, that "the judge is counsel only for public justice; and to promote that object alone all his enquiries and attention ought to be directed."

It is a settled rule at common law, that no counsel shall be allowed a prisoner upon his trial, upon the general issue in any capital crime, unless some point of law shall arise proper to be debated, 2 Hawkins Pl. Cr. 400. Blackst. Com. b. 4. c. 27. s. 5. The qualification expressed in the words "proper to be debated" is not so definite as it seems desirable that it should be.

Upon the trial of issues which (do not in Mr. Justice Foster's not very exact phrase) turn upon the question of Guilty or Not Guilty, but upon collateral facts; prisoners under a capital charge, whether for treason or felony, always were intitled to the full assistance of counsel. Foster 232. See Ratchiff's Case, A. D. 1746, *infra*, and Roger Johnson's Case there cited. And by St. 7 W. 3, c. 3, (of which see the history and some important debates which took place upon it in 5 Cobb. Parl. Hist. 658, 675, 684, 691, 712, 737, 965. See also 4 Hats. Prec. 40, 333. 2 Burnet's Own Times, 141, 161, 163. Foster, 221, 3 Kennett's Hist. 633, 701. 1st ed.) it is enacted, that all and every person and persons indicted for High Treason, except (what Foster calls the lower class) treasons concerning the seals and the coin, whereby any corruption of blood may be made to such offenders or their heirs, or for misprisions of such treasons, shall be admitted to make their full defence by counsel, and the Court before whom such person or persons shall be tried, or some judge thereof, is required immediately upon his or their request to assign to such person or persons such and so many counsel (not exceeding two) as he or they shall desire; to whom such counsel shall have free access at all reasonable hours." No specific punishment is enacted against the refusal to assign counsel and to afford them at reasonable hours free access to a prisoner. The provision concerning the counsel's access to the prisoner might have been more definitely expressed.\* It appears by a note to page 267 of the fourth Volume of Mr. Hatsell's *Precedents*, that on May 2, 1716, the Lords passed a "Bill, for allowing of Counsel to all persons who shall be proceeded against in Parliament for any crimes of Treason or Misprision of Treason." The Commons rejected this bill (which is preserved in the Office belonging to that house) on the question for the second reading. But by Stat. 20 G. 2, c. 30, the above-recited enactment of st. 7

W. 3, c. 3, is extended to cases of parliamentary Impeachments for the same kinds of treasons and misprisions, which cases were excepted, in that statute of king William. In prosecutions for Misdemeanours, defendants are allowed counsel as in civil actions. Mr. Hatsell (*Precedents*, vol. 4. p. 290) in a note, takes notice that this Statute was introduced into the House of Commons soon after the Trial of lord Lovat was finished. It may be added, that the bill was moved for by sir William Yonge, who had been the leading manager of the Impeachment against lord Lovat.

In no trials for felony, whether the offence be capital, or clergyable, or petty larceny (except as to issues arising out of collateral facts, see Foster as cited above) is a prisoner allowed counsel to plead his cause before the jury. "I am far" says Foster, "from disputing the propriety of this rule while it is confined to Felony, and the lower class of Treasons concerning the Coin and the Seals. I know many things have been thrown out upon this subject, and inconveniencies, some real, some imaginary, have been suggested by popular writers, who seem to have attended singly to those on one side of the question: but it is impossible in a state of imperfection to keep clear of all inconveniencies, though wisdom will always direct us to the course which is subject to the fewest and the least; and this is the utmost that human wisdom can do." Foster appears to have been a most laborious and sincere enquirer after truth, and a most diligent, upright, and unimpeachable magistrate. Even Churchill, perhaps the most powerful and most unsparring satirist of his time, has borne testimony to his worth. By the members of his own profession his character and his labours are highly esteemed, and have been highly commended. See in this Collection Wilkes's Case, A. D. 1764—1770 Crosby's Case, A. D. 1771, in which last case he is styled by De Grey, Ch. Just. C. B. 'the Magna Charta of liberty of persons as well as fortunes.' See also 1 Blackst. Comm. ch. 1, in which he is mentioned as 'a very great master of the crown law.' It is therefore to be regretted that he evaded to enter into the merits of the point under consideration, and that respecting it, he has left nothing better, or more distinct than the superficial, trite, and insignificant common places cited above.

Of the many things which, in Foster's phrase, 'have been thrown out on this subject,' the following will probably be thought worth attention.

It appears that in November, 1649 (see Whitelocke's *Memorials* under that date, and 3 Cobb. Parl. Hist. 1539) there were in the parliament "many debates about reformation of things, according to the late petitions, and amongst the rest of particulars, there was a great pique against the lawyers. Inasmuch as it was again said, as it had been formerly, That it was not fit for lawyers who were mem-

was appointed for execution, but by the desire of the prisoners it was resputed two days.

July 8. The Portugal ambassador's brother was relieved.

bers of parliament, (if any lawyers ought to be of the parliament) to plead, or practice as lawyers, during the time that they sate as members of the parliament."

Whitlocke, then one of the Keepers of the Great Seal, made upon this occasion an elaborate and learned Speech, in which is the following passage:

"Sir, The worthy gentleman was pleased to mention one thing with some weight, that lawyers were permitted to counsel, and to plead for men, in matters touching their estates, and liberties, but in the greatest matters of all others, concerning a man's life and posterity, lawyers were not permitted to plead for their Clients. I confess, I cannot answer this objection, that for a trespass of 6d. value, a man may have a Counsellor at Law to plead for him, but where his life and posterity are concerned, he is not admitted this privilege, and help of lawyers. A law to reform this, I think would be just, and give right to people. What is said in defence, or excuse of this custom is, 'That the Judges are of Counsel for the Prisoners, and are to see that they shall have no wrong.' And are they not to take the same care of all causes that shall be tried before them?"

See, too, what Jeffereys says in Rosewell's Case cited below.

"The rule," says Blackstone, "that no Counsel shall be allowed (to) a prisoner upon his trial, upon the general issue in any capital Crime, unless some point of Law shall arise proper to be debated, seems to be not all of a piece with the rest of the humane treatment of prisoners by the English Law. For upon what force of reason can that assistance be denied to save the life of a man, which yet is allowed him in persecutions for every petty trespass? Nor, indeed, as it, truly speaking, a part of our ancient Law: for the Mirror, having observed the necessity of counsel in civil suits, 'who know how to forward and defend the cause, by the rules of law and customs of the realm;' immediately afterwards subjoins, 'and more necessary are they for defence upon indictments and appeals of felony, 'than upon other venial causes.' And the judges themselves are so sensible of this defect, that they never scruple to allow a prisoner Counsel to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact: for as to matters of law, arising on the trial, they are entitled to the assistance of Counsel."

And Mr. Christian on this matter observes that "it is very extraordinary that the law of England should have denied the assistance of counsel, when it is wanted most, viz. to defend the life, the honour, and all the property of an individual. It is the extension of that maxim of natural equity, that every one shall be heard in his own cause, that warrants the admission of hired advocates in

courts of justice; for there is much greater inequality in the powers of explanation and persuasion in the natural state of the human mind, than when it is improved by education and experience." The remainder of Mr. Christian's note contains a very sufficient proof of the necessity of professional advocates to the administration of substantial justice, and some observations on the duties of such professional advocates, and on the course to be pursued by them. He refers to the authority of Cicero and Panetius on these subjects. A not unamusing dialogue upon the same topics, between the indigutive scrupulosity of Boswell, and the playful shrewdness of Johnson, is related in Boswell's Life of Johnson, v. 1, p. 298. 1st ed. 4to.

In the Case of lord Cornwallis, A. D. 1678, *infra*, the Lord High Steward (Henenge lord Finch, afterwards earl of Nottingham) says, that "There is no other good reason can be given why the law refuseth to allow the prisoner at the bar counsel in matter of fact, when his life is concerned, but only this, because the evidence by which he is condemned, ought to be so very evident and so plain, that all the counsel in the world should not be able to answer upon it." The like reason is given by lord Coke, 3 Inst. 137, and is cited by John Cook the Roguist (see his Case A. D. 1600, *infra*). Sir John Hawles, in his remarks on Colledge's Case (A. D. 1681, *infra*), enquires into some of the reasons alledged for this privation, but does not notice that on which lord Finch relies; nor does Emlyn in his learned Preface to his edition of the State Trials, republished in the first volume of this Collection, include the privation itself, in his enumeration of the hardships of the law: But Sir Robert Atkyns, in his "Defence of the late lord Russell's Innocency," subjoined in this Collection, to the Account of lord Russell's Trial, A. D. 1683, powerfully illustrates the severity of the want of counsel. As to the saying that "The court is of counsel for the prisoner," he observes, "For my part I should never desire to depend upon that only, I know what this is by experience." See, too, sir John Hawles's Observations on the Proceedings towards the close of Charles the Second's reign, against several persons charged with High Treason.

For the valuable statute 7 W. 3, c. 3, we are indebted to the Jacobites, by whom it was first proposed, most resolutely and pertinaciously persisted in, and ultimately effected, in spite of very vehement and obstinate opposition, and after repeated failures. Its origin probably was owing chiefly to mere party spirit; in which same spirit it was accordingly resisted by the Whigs, and vilified by Burnet, who, as Foster has shewn, did not understand the act, and contradicts himself in what he says of it. It must be admitted, however, that during the period in which occurred the proceedings upon the Bill for Regulating of Trials

July 10. The Portugal ambassador's brother endeavoured an escape, but was prevented.

The English boy, who was concerned in the murder, was hanged at Tyburn.

in Cases of Treason, and Misprision of Treason, (see 5 Cobb. Parl. Hist. 965.) the friends of the Revolution might have better motives than mere party spirit, for opposing any proposition to facilitate the indemnity of persons, to whom treasonable conduct was imputed.

Sir William Parkyns was tried for High Treason (the Assassination Plot) on March 24th, 1695-6, (see his Case *post*.) after the stat. 7 W. 3, c. 3, had been enacted, but yet one day before the provisions of it were to be carried into effect. He strenuously urged an application for counsel, alledging that the statute was, as to the allowance of counsel, declarative of the Common Law, because it says, that "it was always just and reasonable." But the Chief Justice (Holt) replied, "We are to proceed according to what the law is, and not what it will be." Sir Michael Foster, in his relation, a little over-states the expression of Holt, who was wont himself to use expressions of sufficient clearness and strength. Foster omits to notice, that Parkyns particularly intreated for a delay of his Trial, which delay, though for only one day, would have given him a legal right to that aid, in the conduct of his defence, which the legislature had most solemnly declared was always just and reasonable. But the indulgence for which he prayed, was not granted to him. He was, however, allowed a solicitor, and had been apprised that he might have counsel to advise with before his trial.

It seems probable that the first case in which counsel was had under 7 W. 3, c. 3, was that of Rookwood, for the Assassination Plot, (see this Case A. D. 1696, *post*.) upon which occasion Sir Bartholomew Shower, of counsel for the prisoner, thought fit to make a deprecatory speech to the Court, in answer to which, Chief Justice Holt told him it was expected he should do his best for those he was assigned for.

With respect to the allowance or refusal of Counsel or other assistance, the following account of what was done in some other Cases of Treason and other Felonies, both before and after the stat. 7 W. 3, c. 3, may not be unacceptable.

In the Duke of Norfolk's Case, A. D. 1571. (see vol. 1, p. 966,) he applied to have counsel allowed him; for the answering of the Indictment, and he cited the case of Humphrey Stafford, who was indicted for High Treason, in the first year of H. 7, and had counsel allowed him. But it was answered by Chief Justice Dier, that Stafford had counsel only for an incidental point of law, concerning Sanctuary, and not upon the point or fact of High Treason. So the Duke was not allowed counsel.

In the Case of general Harrison, A. D. 1660, the prisoner desired, lest he should over-run his challenges, that the officer might acquaint him with the number, and the Court said, You shall know it: God forbid the contrary.

In Sir Henry Vane's Case for High Treason, A. D. 1662 *infra*, the prisoner repeatedly applied for counsel, but his applications were rejected. The points upon which he wished counsel for him to be heard were: 1. Whether the collective body of the parliament can be impeached of High Treason? 2. Whether any person acting by authority of parliament; can (so long as he acteth by that authority) commit treason? 3. Whether matters acted by that authority, can be called in question by an inferior Court? 4. Whether a king *de jure*, and out of possession, can have treason committed against him, he not being king *de facto*, and in actual possession? 5. Whether matters done in Southwark, in another county, may be given in evidence to a Middlesex Jury. In the earlier Trials of the Regicides, application had been made for counsel to be heard upon some of these points, and also upon the obligation of the Declaration of King Charles 2, but the applications were rejected.

In Lord Stafford's Case, A. D. 1630, *post*. Counsel were assigned him for matters of law if such should arise, and they were allowed to stand by and hear the evidence, but it was obstinately insisted on the part of the crown, that they should not stand near enough to the prisoner to be able to prompt him, and it seems to have been agreed that they ought not to prompt him.

On Fitzharris's Arrangement for treason, A. D. 1681, *post*, the prisoner put in a plea setting forth, that he had been previously impeached in parliament for the same offence. Upon reading this plea, the Chief Justice (Pemberton) said to him: "We use not to receive such pleadings as this without a counsel's hand to it." Thereupon, Fitzharris prayed counsel might be assigned to him; and being asked whom he would have, he named Sir William Jones and six others. *Id. Ch. Just.* "Here are a great many you name! We will not enjoin any counsel to serve you farther than they are willing themselves. As for Sir William Jones, one of them you desire, he does not practise now in Westminster-hall, and therefore we cannot assign you him unless he please." The prisoner then omitting Jones, named four; who were assigned to him. Some altercation between the bench and the bar afterwards took place, concerning the rule allowing the counsel's attendance upon the prisoner, and it was agreed that they were to have liberty to speak with him alone. Upon his Trial, Fitzharris was refused permission that his solicitor might be by him; and the counsel for the crown endeavoured to prevent his wife's giving him assistance; but, the Chief Justice said, "sure it is no such huge matter to let a man's wife stand by him, if she will demean herself handsomely and fairly;" and he said it was always done that a person should assist

The Portugal ambassador's brother was conveyed from Newgate to Tower Hill, in a coach and six horses, in mourning, with divers of his brother's retinue with him.

the prisoner to take notes for him to help his memory.

In the Case of Busby, *post*, tried at the summer assizes 1681 at Derby, for treason, the prisoner begging he might be allowed counsel, was told by the Judge (baron Street) that if any point in law arose he should be allowed counsel; presently afterwards the same Judge told him to have a care at his peril to challenge peremptorily above the number of thirty five.

Collidge (see his Case A. D. 1631) previously to his Trial, petitioned the king for the use of pen, ink, and paper, and that his children and Mr. Aaron Smith an attorney, and Mr. Robert West a barrister (see Hawles's Remarks) might have leave to come to him. The king ordered that he should have the use of pen, ink and paper, and that he might converse with his children, and Smith, and West, as often as he should desire, in presence and hearing of the warder; He afterwards petitioned that counsel and a solicitor might be assigned to him, that they might have free access to, and private conferences with him, and that he might have a copy of the Jurors to be returned upon his Trial some days before the Trial. In answer to which it was ordered by his majesty in Council, "That the friends and relations of Stephen Collidge, a prisoner in the Tower, shall have liberty of visiting and freely conversing with him; and the Lieutenant of the Tower having first caused their names to be taken in writing, is to suffer such friends and relations to have access to the said Stephen Collidge, without any interruption accordingly." Upon his Trial he asked for a list of the Jury, a copy of the Indictment, and counsel to advise him in matter of law. Neither was granted, and Lord Chief Justice North said, "You cannot have counsel unless matter of law arise, and that must be propounded by you, and then if it be a matter debatable the court will assign you counsel, but it must be upon a matter fit to be argued; for I must tell you a defence in case of High-Treason ought not to be made by artificial cavils, but by plain fact." A long altercation ensued.

When Boroski, upon his trial at the Old-Bailey A. D. 1682, (see the Case, *infra*) for the murder of Mr. Thynne, applied for the assistance of counsel, Chief Justice Pemberton said he was charged with matter of fact: counsel could do him no good in such a case.

In Algernon Sidney's Case for Treason, A. D. 1683, *infra*, Jettiers, the Chief Justice, told him, "Because no prisoner under your circumstances is to have counsel, but in special cases to be assigned in matters of law, the Court is bound by their oaths and duty of their places, that they shall not see any wrong done to you." Before pleading, he asked for counsel, in order, as it seems, to be advised

with as to the sufficiency of the Indictment; but his request was refused, the Chief Justice saying, "If you assign us any particular point of law, if the Court think it such a point as may be worth the debating, you shall have counsel." After some farther altercation, he pleaded Not Guilty. On his Trial, a fortnight afterwards, it appeared that after his pleading, counsel had moved on his behalf for a copy of the Indictment, which the Court had refused. On his Trial two persons whom he desired were allowed to write for him. In the course of his Trial he desired counsel as to the point of there being but one witness, but was told, that was a point of fact. Then he desired counsel to the point that conspiring to levy war is not Treason; upon which also he cited Throgmorton's Case: but the Chief Justice said, "You had as good ask me, whether the first chapter in Littleton be law." Counsel was also refused to him to argue his objection to his jury for want of freeholds.

See, too, in Sidney's Case, the Note referring to Rosewell's Case.

In Lord Russell's Trial, A. D. 1683, *infra*, he asked if he might have somebody to write to help his memory. The Attorney General (Sir Robert Sawyer) answered, "Yes, a servant," to prevent, observes Dalrymple, the aid of counsel. He afterwards asked counsel (it appeared that counsel to advise with had been previously assigned him elsewhere) to challenge in London for want of freehold; and three whom he desired were assigned. He afterwards desired to have his counsel heard as to whether two witnesses should not prove the same overt act; and whether conspiring to levy war was treason; but Chief Justice Pemberton would not permit it.

In Rosewell's Case, for Treason, A. D. 1684, *infra*, he asked for counsel at the time of his arraignment and before he pleaded, but Holway, Justice, told him, "We cannot assign you counsel at present, for we hear nothing to assign it upon. If there do any question of law arise in your Case, then the Court will (as they are bound to do) take care of you that you suffer no prejudice for want of the assistance of counsel, and in matters of fact upon your Trial, the Court are of counsel for you: nor would they permit counsel to come to him in the interval between his arraignment and trial; but by the consent of the Attorney General he was allowed, in the presence of the keeper, to see his wife and children. On his Trial he asked for and was allowed the use of pen, ink and paper, before the Jury was sworn, and Jeffries, Chief Justice, told him there should be care to be notice taken that he might not be surprized as to the number of his peremptory challenges. Afterwards the prisoner being brought up for judgment objected, in arrest of judgment, that the words imputed to him were not, as laid in the Indict-

On the scaffold, he spake something to those who understood him, in excuse of his offence,

ment, treasonable, and the Court thinking apparently that there was great weight in what he had objected, assigned him three counsel, whom he named, to argue upon the insufficiency of the indictment, which they were not permitted to see. Jeffries in refusing them a copy of the Indictment seems to admit that this denial was a hardship on the prisoner, and proceed—“ I think it is a hard case that a man should have counsel to defend himself for a twopenny trespass, and his witnesses examined upon oath, but if he steal, commit murder or felony, nay, high treason, where life, estate, honour, and all are concerned, he shall neither have counsel nor his witnesses examined upon oath.”

In the Case of Joseph Hayes for Treason, A. D. 1681, *infra*, when the prisoner asked that counsel might be heard against the admissibility of comparison of hands as evidence, adding he had been informed it had been denied to be evidence (he quoted Lady Carr's Case), it was refused; Jeffries saying, “ Somebody has put it into your head, and puffed you up with a vain story: there is no such thing; it is a fiction, a mere whim only said by Mr. Sidney, and no ground in the world for it.” And when the prisoner afterwards objected that his Trial was not, as it ought to have been, under the Stat. 35 H. 8, c. 2, and desired counsel to argue that point, Jeffries refused it: “ We are of another opinion. If any whimsical notions are put into you by some enthusiastic counsel, the Court is not to take notice of their crotchets.”

Sir Thomas Armstrong, (see his Case A. D. 1694, *infra*), being arraigned upon an outlawry for treason, and alledging that he was beyond sea at the time of the outlawry, that his year was not yet expired, and that he then was ready to render himself and did render himself, and claiming the benefit of sect. 8 of the stat. 5 and 6 E. 6, c. 11. (to which it has been since repeatedly decided that he was entitled) prayed for counsel to plead for him in that case. *Ch. Just. Jeffries*, “ For what reason? We are of opinion it is not a matter of any doubt. For you must not go under the apprehension that we deny you any thing that is right. There is no doubt nor difficulty in the thing.”

In lord Delamere's Case, A. D. 1686, *post*, the Lord High Steward (Jeffries) tells the prisoner, “ You cannot by the course of law have counsel allowed you in the case of a capital crime, till such time as the Court where you are called to answer is apprised that there is some matter of law in your Case that may need counsel to be heard to inform their judgment, and which they may think convenient to hear counsel to: For if in case any prisoner at the bar shall beforehand be allowed to have counsel to start frivolous objections such as this, and we all know that there are some who

laying the blame of the quarrel and murder upon the English in that business.

will be easily prevailed with to endeavour to pick holes where there are none, and to offer matters foreign from the things whereof the party stands accused, and upon the prisoner's bare request counsel must be heard to every trivial point, the Courts of Law would never be at an end in any trial, but some dilatory matter or other would be found to retard the proceedings: But it does not consist with the grandeur of the Court nor your lordship's interest to let such a frivolous plea interrupt your lordship's trial. However, if your lordship has counsel ready I will not refuse to hear them.” Lord Delamere in vain urged that he could not have counsel there ready, because none were assigned to him. Jeffries told him, He could not tell how to help that.

When lord Preston (see his Case, A. D. 1690, *infra*) desired that he might be heard by counsel on a point of law, it was ruled that the Court were not to assign counsel but upon matter when they apprehended required debate. And when lord Preston urged that there was a doubt in the Case, it was replied by Atkins, Chief Baron, That it was not the doubt of the prisoner, but the doubt of the Court that will occasion the assigning of counsel.

In Ashton's Case for Treason, A. D. 1690, *post*, the prisoner, after obtaining from the Court the use of pen, ink, and paper, desired likewise that they would give his solicitor leave to be as near him as possible, only to refresh his memory if he should forget any thing. *Ld. Ch. Just. Holt*: “ That is a thing you cannot of right demand, the other of pen, ink, and paper, you may.” *Prisoner*: “ My lord, I shall acknowledge it as a very great favour.” *Ld. Ch. Just. Holt*: “ That is an innovation that ought not to be, the Court cannot allow it.”

In Anderton's Case, A. D. 1693, *infra*, it is stated, that the prisoner alledged that the matter given in evidence against him was not sufficient to make an overt-act, and prayed that he might have counsel allowed him to plead, it being a matter of law, to which the Court replied, that there was no room for any counsel to be assigned him, for there was no matter of law for them to plead to, and therefore desired him not to give the Court any unnecessary trouble. In the account of Anderton's Trial, published by Grascomb, a non-juror, and inserted in this Collection, it is stated, that “ the prisoner desired he might have the benefit of counsel upon the question, Whether printing were treason? But the Court peremptorily denied to him, what was (as he learned in the law tell me) never denied to any man before, counsel as to matter of law.”

Charnock, who, together with two others, was tried for High Treason on March 11th



After a few private words and passages of Popish Devotion with his Confessor, he gave

1696, fourteen days before the operation of the stat. 7 W. 3. c. 7, struggled hard for counsel to assist him in his Trial, and to direct him how to manage himself, as well as for a copy of his Indictment; alledging the ground of the act, and the reasonableness and equity that all prisoners should be made capable of fairly defending themselves. Both his requests were refused. See the Case, *infra*, where it appears, an Order had been given that counsel should be permitted to come to the prisoners, and be with them in private previously to the Trial. See too what passed on Charnock's saying. He had been informed that Ch. Just. Treby had in a conference between the two houses declared his opinion, that by the common law a person arraigned for high treason should have a copy of the Indictment and counsel to assist him in his defence. Charnock desired that the Indictment might be read to him, which in Latin was read over to him twice, and it seems that he was previously allowed pen, ink, and paper. He afterwards hoped the Court would give him leave to have his solicitor or a friend by him during his Trial, that he might be instructed in some measure how to manage himself, and when it would be proper for him to speak, and what: but Holt, Ch. Just. said, "No, we can order no such thing. You must speak for yourself." It appeared that an order had been given, for a copy of the printed to be delivered, which the Chief Justice noticed was not of right, but of favour."

When Sir John Friend, (see his Case, A. D. 1695, *post*), requested, that if any matter of law should arise upon his trial he might be heard by his counsel, Holt, Ch. Just., answered, "If any matter of law do arise at your Trial, and you will tell us what that matter of law is, and the court see that it is a matter of doubt, we can, and ought, and no question shall assign you counsel." But upon the prisoner's further application, the Ch. Just. added, "We are bound to tell you when any thing of that nature appears before us."

In Cranborne's Case (A. D. 1696, *infra*) when sir B. Shower, counsel for the prisoner, expressed his hope that the officer of the court took an account of the challenges, Holt, Ch. Just. said, "Nay, you should take care of the challenges, who are his counsel. If he had no counsel, we would take care of him."

In lord Warwick's Case, for murder, A. D. 1699, *post*, counsel were assigned him in case any matters of law should arise.

In the Case of Kidd, for murder and piracy, A. D. 1701, *post*, counsel were assigned him and were heard in support of an application to put off the Trial.

It appears by Mr. Hatsell's Precedents, vol. 4, p. 266, that Sacheverell, (see his Case, *infra*, A. D. 1709-10) on February 13th, petitioned the Lords to acquaint them, that some of the coun-

sel allowed to assist him, had returned their fees, and refused to assist him, and therefore praying that the Lords would assign other counsel, and also a solicitor, to which the Lords agreed.

In the Case of the Earl of Wintown, impeached of Treason, A. D. 1716, *post*, it appears that sir Thomas Powis and Mr. Mead, to whom he had caused application to be made to appear for him, excused themselves, whereupon he presented a Petition for time to nominate other counsel, which was granted, and sir Constantine Phelips, and Mr. Peer Williams were afterwards assigned to him. Upon a subsequent day (March 11th) it appears, that "Upon reading the Petition of George Earl of Wintown, praying that this house [of lords] will be pleased to assign and add Mr. Kettelby, and Dr. Strahan to his counsel, formerly named, and that they may have access to him during his confinement. It is Ordered, That the counsel above-mentioned be assigned the petitioner to be heard to matters of law, but not to matters of fact, so as not to put off the petitioner's Trial; and that they or either of them, have access to the petitioner from time to time at all reasonable times." In the same Case, the Lord High Steward (lord Cowper) told the prisoner, "The counsel assigned you are not to cross-examine any witnesses, nor to give you any assistance, public or private, while matter of fact only is in question; but if any matter of law arise during the course of your Trial, they may speak to it in your lordship's behalf, and to that end are permitted to be within hearing, that they may be the more ready to serve your lordship on such occasion."

In the Case of lord Oxford, A. D. 1717, *post*, who was charged, in one Impeachment, with High Treason, and also High Crimes and Misdemeanors, the Lord High Steward (lord Cowper) acquainted the prisoner and others whom it might concern, with such Orders as the Lords had made, one of which was, "That counsel for the Lord (the prisoner at the bar) may be present at the bar in order to be heard to any matter or point of law (if any such shall arise) relating to the High Treason, and also to make that Lord's full Defence on the Articles of Impeachment of High Crimes and Misdemeanors, as well in matters of fact as matters of law."

In the Case of Lord Balmerino, *infra*, A. D. 1746, upon an indictment for treason, the prisoner, nearly three weeks before the day appointed for his Trial, petitioned that an attorney whom he named should be assigned solicitor for him, which was accordingly ordered on the same day, and also that he might have access to him at all reasonable times; but counsel was not desired or ordered. Very early in the Trial, before any witness had been called, he made an interlocutory objection, and thereupon the Lord High Steward, lord Hardwicke, asked him, If he would have counsel assigned him?

him his beads and crucifix, laid his head on the block, and it was chopt off at two blows. The

and he answered, No. He afterwards, in the course of the Trial, took a frivolous objection, which after some argument on the part of the Crown he abandoned. However the Lords thought fit to ask the opinions of the judges, which were given unanimously against the objection. And the prisoner then admitted that he had previously had the advice of counsel to the same effect. After conviction, he started another objection in arrest of judgment. The Lord High Steward seems to have thought that in that late stage of the business, considering that the prisoner had declined to have counsel to make his full defence, and that it appeared he had had the advice of counsel upon his case, the Lords should, before appointing counsel to argue a particular point, have that point so far opened as to see whether there was any colour in it or not. However upon adjourning to the Chamber of Parliament, the Lords unanimously resolved, That in case the prisoner desired it, they would assign him such counsel as he should propose. Two were accordingly assigned; but, when they attended on a subsequent day as had been appointed, the prisoner abandoned his objection, and would not give the Lords the trouble of hearing them.

So in the Case of lord Lovat, A.D. 1747, *post*, who was tried upon an Impeachment for High Treason, it was ordered, That the counsel assigned the prisoner might be present when he was at the bar, in order to be heard touching any point or matter of law, if any such should arise during the Trial. When the Managers for the House of Commons were proceeding to examine witnesses, lord Lovat begged that his counsel or solicitors might be allowed to examine his witnesses, and to cross-examine those produced on behalf of the Crown, and to take Notes. Lord Hardwicke, Lord High Steward, stated, that the known and clear law in these cases was, that his counsel and solicitors had liberty to assist him in all matters of law that might arise in the course of his Trial, but not to assist him in matters of fact or in the examination of witnesses. As to taking Notes, the Lord High Steward said, he had observed, that while the Managers were speaking, one of the prisoner's solicitors took Notes, which had been allowed. Upon this lord Lovat said, that by reason of his infirmities (he was eighty years of age) it would be impossible for him to make any defence at all, if his counsel or solicitors were not allowed to examine the witnesses. The Lord High Steward then asked the Managers, whether they had any thing to offer on that head; and it was answered on their part, that whatever inclination they might have to indulge the noble lord at the bar, it was not in their power to depart from the law of the land. The prisoner's counsel and solicitors were not allowed to assist him in the examination or cross-examination of witnesses.

rest condemned for the murder were all reprieved\*.

The Articles of Peace were signed by the Portugal ambassador, who thereupon went out of town†.

It may not be impertinent to add what appears in Whitelocke, under date August 5th,

In the Case of earl Ferrers, for Murder, A.D. 1760. *post*, it appears by the speech of the Lord High Steward (Henley) that the prisoner had "pursuant to the course of that Judicature had his own counsel assigned" to him, so that "he was enabled to make such defence as was most for his benefit and advantage." But though his counsel might advise him what defence to make, he was compelled himself to make it, neither did his counsel examine his witnesses nor cross-examine those for the prosecution. The defence adopted was that of insanity. There is some appearance of absurdity in requiring a prisoner himself to conduct this defence. Mr. Yorke, the Solicitor General, in his Reply on the part of the Crown, argued against the validity of the defence, from, among other matters, the ability with which it was conducted.

In the Trial for Bigamy, a clergyable felony, of the duchess of Kingston (as she called herself) before the House of Lords, A.D. 1776, *post*, all the examination and cross-examination, on the part of the prisoner, of witnesses, was conducted by her counsel.

\* Whitelocke does not mention by what authority they were reprieved. Mrs. Macaulay says of this reprieve, "This exertion of power in Cromwell was contrary to an Article in the Instrument of Government, which denied the supreme governor the liberty of granting pardon for murder." The third Article of the Instrument of Government, was, "That all writs, processes, commissions, patents, grants, and other things which now run in the name and stile of 'The Keepers of the Liberty of England, by authority of Parliament,' shall run in the name and stile of the Lord Protector, from whom, for the future, shall be derived all magistracy and honours in these three nations, and shall have the power of pardons, (except in cases of murder and treason,) and benefit of all forfeitures for the public use. And shall govern the said countries and dominions, in all things, by the advice of the council, and according to these presents and the laws." The Instrument of Government is inserted at large in the Memorials of Whitelocke, by whom, principally, it is supposed to have been contrived. It will also be found in 3 Cobb. Parl. Hist. p. 1417.

† In a letter from La Bastide de la Croix to De Baas, dated London, [10 July, 1654,] it is said, "This morning, at eight of the clock, the Portugal ambassador signed his Treaty, and departed from" [qu. for] "Gravesend at ten. His brother was beheaded this afternoon, and his man hanged at Tyburn." 2 Thurl. 439.

in this same year 1654, that the Portugal ambassador at Gravesend, in his voyage homewards, was arrested by some merchants of London, to whom he owed great sums of money which they had lent him here, and they stopped his journey\*.

From a passage in May, introduced in a note to Lord Macguire's Case, in vol. 3, p. 654 of this Collection, it appears, that when Mrs. Leviston's room was searched in 1614, upon the occasion of the escape of Lord Macguire and Mac Mahone, "because the French minister had lodgings in her house, to prevent any occasion of offence, a declaration was drawn up to give his most Christian majesty satisfaction touching that affair."

The following article is extracted from Thuroloe's State Papers, vol. 2, p. 267.

"To the right honourable Council sitting at Whitehall. The Commissioners for managing estates under sequestration, sitting at Haberdashers' Hall, do humbly represent, that the Commissioners for London have certified them of an arrear of 3,000*l.* or thereabouts, due for the rent of a house belonging to the marquis of Winchester, from the Spanish ambassador, which hath been formerly demanded of him; but the said ambassador refused to hear of the same from any committee, or to give his answer thereupon to any other than to the Parliament or Council of State. This hath been made known to the then Council of State, during the sitting of the late Parliament, about two years since; and they were pleased to take some time to consider the same, but never ordered any thing therein, as we have heard. We therefore thought it our duty to present the same to your honours, humbly submitting it to consideration, by whom, and in what manner, a further demand thereof shall be made; and whether your honours shall think fit to give any order herein unto us. J. UPTON, EDW. CARY, RICE WILLIAMS, RIC. MOORE."

May 6, 1654.—(Indorsed.)

"Read June 15, 1654, and the consideration respited."

\* In another place, Whitelocke briefly notices a matter involving the Privileges of Ambassadors and their attendants: "Feb. 28, 1655-6. Some of the Swedish ambassador's gentlemen had a little quarrel with two fidlers in a tavern, and beat them, for calling the gentlemen Swedish dogs, and other foul language and ill carriage of the fidlers, who were drunk, yet alderman Tichburn bound over the gentlemen to the sessions, being apprehended by a constable: and the fidlers, in actions of battery against one of the gentlemen, had a verdict for forty pounds damages. The ambassador was highly exasperated at this affront, and, as he called it, "breach of the privilege of an ambassador," and complained of it; upon which his servants had no further trouble, which gave full contentment to the ambassador."

VOL. V.

Dr. Zouch, who was one of the delegates appointed by Cromwell to investigate this business, published, in 1657, a Latin Tract upon the Inviolability of Ambassadors, under the title of "*Solutio questionis de Legati delinquentis competente Judicio*," in the preface in which he gave a short account of the transaction. This work, including Zouch's Preface, was republished, with an English translation on the alternate pages, in the year 1717, when the proceedings against Count Gyllenberg, the Ambassador from Sweden to Great Britain, had called the public attention to the Rights and Liabilities of Ambassadors.—From a copy of this work in the Bodleian Library, has been taken the following translation of Zouch's Preface:

"On the 22nd of November, 1653, there happened an unlucky accident in a mad, but premeditated riot, which was raised by the retinue of the Portuguese ambassador, chiefly upon the account of his brother. For an English gentleman walking in the New-Exchange at London, and thinking no harm, was basely killed by a pistol-shot. The most eminent the Lord Protector, shewing a just concern both for the blood of an English subject, and the pretended privilege of an ambassador, consulted the most eminent professors both of the common and civil law, how such a barbarous murder might be punished: But these disagreeing among themselves, his highness thought fit to leave the decision of this affair to a Court of Delegates, consisting of the Chief Justice and two other judges, the same number of gentlemen, and three doctors of the civil law. When the ambassador's brother and the other offenders were brought before this Court, he who was supposed by some to be a colleague in the embassy, vaunted there he was his king's ambassador, and subject to the jurisdiction of no one else: but producing the king of Portugal's letters, all that appeared from them, was, that the king intended in a little time to recall his brother, and to give him commission to manage his affairs in England. But this being judged insufficient to prove him an ambassador, he was, without any further regard to the privileges of that character, ordered, himself as well as the rest, to plead to the Indictment. And accordingly pleaded Not Guilty. But witnesses appearing, and relating the whole matter of fact upon oath, they were all convicted and condemned to die. The ambassador's brother having been discovered in an attempt to make his escape, was afterwards executed, together with an English servant of his. The author of a book, entitled "*De jure et officio inter gentes*," being of the civilians present at his trial; and who, in the case of punishing a criminal ambassador, seems to agree with Hugo Grotius, as he does in many other cases, has thought it worth his while in an affair of such importance, to examine further what is more agreeable to the law of nations. To this purpose, he carefully read over all the authors he could meet with on this subject, diligently ob-

serving what they had borrowed from others; and having faithfully collected, digested, and considered the arguments for and against the immunity of an ambassador, observing that those against the opinion of Grotius were weaker than those which were for it; he made no scruple of submitting his own thoughts and observations to the examination of the public; being fully satisfied that the immunity of an ambassador, as determined by Grotius, has the greatest tendency to preserve peace and commerce between princes and states; and that if it be received under those limitations which he has settled, it can never deceive or injure the safety and government of the prince."

In the same year (1717) David Jones's translation of Zouch's work was published, without the original, in London. This publication was dedicated to General Stanhope, who was at that time First Lord of the Treasury and Chancellor of the Exchequer. In the translator's preface the following Narrative\* of this business was inserted. It contains, with some trifling variations, the account given in 3 Clarendon's Hist. of the Rebellion, 492. It should, however, be noticed that Lord Clarendon calls the punishment of Don Pantaleon de Sa, "a very exemplary piece of justice."

"Oliver Cromwell, in the year 1658, having assumed the supreme power into his own hands, by the title of Lord Protector; among other potentates who counted his friendship, the king of Portugal sent an ambassador to beg a peace, and to purchase it by the payment of a great sum of money.† The ambassador had a very splendid equipage, and in his retinue his brother Don Pantaleon de Sa, a knight of Malta, and a man eminent for many great actions; who out of curiosity accompanied his brother in this embassy, that he might see England. He was a gentleman of a haughty and imperious nature, and one day being in the New Exchange in the Strand, upon a sudden accident and mistake had a quarrel with one Mr. Gerard, a relation of the lord Gerard, afterwards earl of Macclesfield, who had then returned some negligence and contempt to the rhodomontades of the Portuguese, and had left him sensible of receiving some affront: whereupon Don Pantaleon repaired thither again the next day, with several servants, better armed and provided for an encounter, imagining he should there find his former adversary, who expected no such visit. But the Portuguese not distinguishing persons, and finding many gentlemen walking there, and amongst the rest one Mr. Greenaway, a gentleman of Lincoln's-Inn, whom he fancied like the

other, he thought he was not to lose the opportunity, but entered into a new quarrel; in which Mr. Greenaway, utterly unacquainted with what had formerly passed, and walking there accidentally, was killed with a pistol-shot, and others wounded.

"This unhappy accident came to pass on the 22nd of November: upon which the people rising from all the neighbouring parts, Don Pantaleon thought fit to make his retreat to his brother's house, caused the gates to be shut up, and put all the servants in arms to defend it against the people, who had pursued him, and now flocked thither from all quarters to apprehend those who had caused the riot, and slain the gentleman.

"The ambassador knew nothing of the affair; and looking upon himself as affronted and assaulted by a rude multitude, took care to defend his house till the government should allay the tumult. Cromwell, who was soon informed of the insolence, sent an officer with some soldiers to demand and seize upon all those who had been engaged in the action, and the ambassador came to be informed of the truth of the story, with which he was exceedingly afflicted and astonished. The officer demanded the person of his brother, who was well known, and the rest of those who were present, to be delivered up to him, without which he would break open the house, and find them wherever they were concealed.

"The ambassador insisted upon the privilege that was due to his house by the law of nations, and which he would defend against any violence with his own life, and the lives of all his family: but finding the officer resolute, and that he was not strong enough for the encounter, he desired he might have so much time allowed him, as to send to the Protector; which being granted, he complained of the injury which was done him, and desired an audience. Cromwell sent him word that a gentleman had been murdered, and several other persons wounded, and that justice must be satisfied; and therefore required that all the persons concerned might be delivered into his officer's hands, without which, if he should order the soldiers to withdraw and demit the demand, the people would pull down the house, and execute justice themselves; the event of which he would not answer for: when that was done, he should have audience, and all the satisfaction that was in his power to give him.

"The ambassador desired that his brother and the rest might continue in his house, and he would be responsible and bring them forth to justice, at a time which should be appointed for them: but nothing of this kind would serve, the delivery of the persons was positively insisted upon, and the people increased their cry, that they would pull down the house. Whereupon the ambassador was obliged to deliver up his brother, and the other offenders, who were all sent prisoners to Newgate.

"Being thus got into fast hold, and the Protector desirous that an inquisition should be

\* It is printed from a copy obligingly imparted by the present Earl Stanhope. (A. D. 1809.) His lordship's grandfather, General Stanhope, (the first Earl) was Secretary of State when Goltberg was seized.

† This is not quite correct. Cromwell was not Lord Protector, but only Lord General, when Mr. Greenaway or Greenway was killed. See the note to p. 465.

made for the blood of a subject, and at the same time solicitous for the privilege of an ambassador, as Don Pantaleon the prisoner was affirmed to be; by the advice of his council had recourse to the opinions of the most eminent lawyers, both common and civil, how such a notorious murder might be punished: but they not agreeing among themselves, he appointed the Chief Justice, and two more, as many noblemen, and three doctors of the civil law, viz. our author Dr. Zouch, who was sent for from Oxford on purpose, Dr. William Clerk, and Dr. William Turner, to take cognizance of, and examine into this knotty affair.

"Don Pantaleon, the ambassador's brother, and the other offenders of the family, making their appearance before them, Don Pantaleon, whom some took to be a colleague in the embassy, vaunted that he was the king his master's ambassador, and was not subject to any other jurisdiction whatsoever. And then producing the king of Portugal's letters, all that appeared by them was, that the king intended in a short time to recall his brother, and to give him a commission to negotiate his affairs in England, which being not at all sufficient to entitle him to the privilege of an ambassador, all thoughts that there was any regard to be had to him on that account were laid aside; and a resolution taken to have him, with the rest of them, tried for the crimes laid to their charge.

"The ambassador used all imaginable instances in behalf of his brother, when at the same time he expressed his willingness to leave the rest to the mercy of the law; but he could receive no other answer but that justice must be done, and justice was done, to the full. I know that there was a report, which subsists to this day, that the then government should acquaint the king of Portugal with the misadventure; and that he should send answer, He left the criminals entirely to be punished by our law, and in our country. But since our histories are wholly silent in this respect, I dare aver nothing concerning it; and perhaps the temper and haughtiness of Cromwell would not let him come into such a condescension, in respect to a crown that was then buying a peace of him at a full price, and upon the humblest submission.

"On the 5th of July, 1654, the persons commissioned to try the offenders were sir Henry Blount, famous for his wit, and a gentleman that lived almost to our times, our author Dr. Richard Zouch, Dr. William Clerk, Dr. William Turner, civilians, Mr. Lacy, &c. They sat in the Upper Bench, as they then called it, in Westminster-hall; where the prisoners were arraigned, and pleaded Not Guilty.\* I should have been glad to have been able to give the substance of the trials; but having never met with any footsteps of it in all my inquiries, it remains for me to observe, that Don Pantaleon and an English boy, who was his servant, were

convicted of murder and a riot, and received sentence of death accordingly. There were three more, all Portuguese, tried at the same time, and all of them likewise convicted, condemned, and executed, according to the Lord Clarendon's Account, at Tyburn: but Zouch mentions no other to have suffered than the English boy and Don Pantaleon; who after he had endeavoured in vain to make his escape, was, on the 10th of July, beheaded on a scaffold upon Tower-hill. It is remarkable, that that unfortunate gentleman Mr. Gerard above-mentioned, was a few hours before, in the same place, beheaded for a pretended conspiracy against Cromwell, a design to seize the Tower, and to proclaim the king; and that Don Pantaleon's brother, the ambassador, even on the very same day, was terrified into a ready signing of the peace between the king his master, the Protector, and the Commonwealth of England."

Oldmixon, who takes his account from Whitelocke, observes, "The Lord Clarendon, quite contrary to Whitelocke and the fact, says the rest were hanged at Tyburn; to make Cromwell as bloody minded as he could;" and he proceeds, "It is said, the Spanish Ambassador forwarded this execution as much as lay in his power, saying 'Don John of Portugal is an Usurper and no lawful King, and Don Pantaleon may be executed without violating the Rights and Privileges of Ambassadors.'" He further says, "The Emperor of Germany brought this prosecution as a precedent, to justify his carrying off the Prince of Turstemberg, Plenipotentiary at the Treaty of Cologne twenty years after, and in the Manifesto his Imperial Majesty published, this piece of Cromwell's Justice in executing the Portuguese gentleman is cited at large; though the whole herd of writers against him talk of it as a breach of the Law of Nations." • •

Guthrie, without referring to any authority, says, that "when Colonel Whaley invested the Ambassador's House with a party of horse, the Ambassador ordered his domestics to stand to their arms, and sent to complain to Cromwell of a breach of the Law of Nations. Cromwell with great magnanimity answered, that Justice must be done, and that blood must be satisfied with blood. All the other foreign Ambassadors in and about London took a very warm concern in the matter, not being able to conceive that a Man of Quality, an Ambassador's brother, and Knight of Malta, as Don Pantaleon was, ought to be questioned for the murder of a mechanic; for so they judged an English gentleman to be. But all remonstrances to Cromwell were ineffectual, and the Ambassador's brother, at once to the amazement and admiration of the world, was tried, condemned, and publicly executed for the murder."

\* Lord Clarendon says they were all brought to their trial at the sessions at Newgate.

Carte grossly misrepresents this transaction as follows:

"The king of Portugal had been, by the terror of the English fleet, and the losses he and his subjects had suffered by the intercepting of their ships from Brasil, and the general interruption of their commerce, obliged to send over an ambassador to treat for a peace with England." The rump had insisted on such hard conditions in the preliminaries, to which an assent was demanded in six days, before they would enter on a treaty, that Don Juan de Guimaraes, who was first employed on that subject, returned home without any success. In expectation of a gentler treatment from Cromwell, whose circumstances rendered a war very inconvenient to him, the Conde de Cantenaro was sent to London, with the character of ambassador extraordinary and plenipotentiary; to renew the old alliance between the two kingdoms; which was clogged with new demands. These were, the release of English merchants and their goods, arrested at Lisbon, which was not so much as disputed; and the sum of 180,000*l.* as well for damages done to the English by P. Rupert's squadron, which had been received into that port, and there protected, as for the charges of reducing the revolted ships to obedience, which was submitted to, upon an abatement of the sum demanded. The article for the English merchants at Lisbon to meet for the free exercise of their religion, seems to have been qualified, by allowing them the use of the English service in their private houses, and on board their shipping. An obligation on the Portuguese, not to raise their duties on merchandize, to hire no ships but English for their navigation, to grant these last a monopoly or pre-emption in the trade for salt, and to allow them a free liberty of commerce in all their ports of Brasil and the East-Indies, were demands very disagreeable to the Portuguese, but all complied with, except the last, from which Cromwell thought fit to recede, as too unreasonable and contrary to the practice of all nations, which had colonies in the Indies. During this treaty, Don Pantaleon Sa, a young gentleman, brother to the ambassador, being at the New Exchange, on Monday, Nov. 21, 1653, there happened some *rodomontado* discourses, in which he conceived himself affronted, as several English likewise did, one whereof, Mr. Thomas Howard, when they met at the same place the next evening, demanded satisfaction of him, and some drew their swords; which was likewise done by the ambassador's servants, no otherwise armed, and one Greenway, an Englishman, was killed. The fray appears to have been accidental: but all the English being in a fury at the death of their countryman, the mob threatened to pull down the ambassador's house; and Cromwell sending a troop of guards to demand the parties concerned, they were delivered and committed to Newgate. Don Pantaleon's escape, and lying for some time concealed, or a dispute about the privileges of an ambassador in such a case, caused the Trial to be put off till July 5, when being

indicted before Rolles, chief justice of the Upper Bench, assisted by half a dozen common lawyers, and as many civilians, he was found guilty by a jury, half English and half foreigners, as were likewise four of his servants. The plea which he had made of Privilege was not so much as suffered to be argued, and he was threatened to be pressed to death immediately, if he did not plead directly to the indictment. The quarrel being sudden, and the death of Greenway imputed, the crime seemed to be manslaughter, rather than murder: but Cromwell made of it a political affair; making the ambassador a thousand professions of kindness, and promising soon to restore him his brother. It was likewise given him to understand, that the prosecution had been carried on purely to get him to sign a rigorous article, that obstructed the conclusion of the treaty; which the ambassador, deluded by these promises and suggestions, presently signed. Cromwell, having thus treacherously gained his point, gave up Don Pantaleon to the rage of the populace: this young nobleman was, on July 10, beheaded upon Tower-hill; one of his servants was hanged at Tyburn; and the ambassador departed the same afternoon for Lisbon."

Hume treats this business with great carelessness, and what little he says of it is incongruous in itself, as well as inconsistent with the facts of the case. He first calls it, "an act of justice, which gave satisfaction, though the regularity of it may perhaps appear somewhat doubtful," and in the same page says, "that the laws of nations were plainly violated in it." He also, trusting to the allegation of Don Pantaleon in his Petition to Cromwell, (2 Thurloe 429) says, that he was joined with his brother the ambassador in the same commission, which allegation appears from Zouch's and Whitelocke's accounts to be untrue. Mr. Christian [Blackst. Comm. B. 1 c. 7, note 4] seems to have been misled by Hume and thus his observations and authorities concerning the inviolability of an ambassador are not exactly in point. Upon the whole, as Mr. Ward has observed, the Case of Don Pantaleon Sa, however it may militate against the exemption from trial of an ambassador's attendants, yet proves nothing either one way or the other with respect to the ambassador himself.

Bishop Burnet had a just view of the facts of this Case. In his "Summary of Affairs before the Restoration," in the first vol. of the History of his own Time, he says, "The putting the brother of the king of Portugal's ambassador to death, for murder, was the carrying justice very far, since though in the strictness of the Law of Nations it is only the ambassador's own person, that is exempted from any authority but his master's that sends him; yet the practice had gone in favour of all that the ambassador owned to belong to him."

The following documents, printed in Thurloe's State Papers, concern this matter.

An intercepted Letter of Sir W. Vane to Sir John Sayers, Major to the Lord of Oxford's regiment at the Hague.

Dear Jack ;

Here is a foolish Portugal Ambassador, whose brother pretending to have received some affronts in the New Exchange, came the other night 50, or 60 of them, armed, swords, pistols, coats of mail, and coaches full of gunpowder, to have blowed up the New Exchange, if they could not have gotten in ; they found almost nobody there, only 4 or 5 gentlemen, of whom they killed two. The General at 12 o'clock sent to take the brother, and 7 or 8 more, out of his house, which the Ambassador was forced to yield to. [1 Thurloe's State Papers, 610.]

Extract of a Letter from Mons. de Bordeaux, the French Resident in England, to Mons. Brienne the Secretary of State in France, 6 Decemher 1653. (N. S.)

J'ajouterai une petite rencontre arrivée depuis deux jours à l'ambassadeur de Portugal. Son frere et toute sa famille pretendans avoir été maltraités par quelques gentilhommes Anglois dans la Bourse, se résolurent Mardi d'en avoir raison, et se rendirent au même lieu sur le soir armés, de cottes de maille, brassarts, rondaches, pistolets, greuvades, et petards ; se saisirent des portes et montèrent en haut où quelques Anglois s'étant trouvés il y eut combat dans lequel le colonel Irlandois fut tué et un autre gentilhomme spectateur.—Je n'en pas manqué de rendre tous les offices d'ami au dit Sieur Ambassadeur, même de lui donner avis sur le point que ses gens sans se preparoient pour cette entreprise de les retenir ; mais il croyoit que l'honneur des Portugais étoit trop engagé pour se contenter d'un coup de poignard, que ses gens avoient donné la veille. [Vol. 1, p. 616.]

London to wit.

The Examination of William Metham, of Metham in the county of York, gentlemen, taken the 8th day of April 1654, before us Thomas Foot and Robert Tichborne, aldermen and justices of pence for the said city, by virtue of an Order of his highness the Lord Protector and the Council at Whitehall, bearing date the 7th of April instant.

The Examinee being examined, and asked, whether he was at the New Exchange on Monday the 21st of November last, he answereth, that he was not there in the Monday aforesaid ; but confesseth, that on Tuesday the 22nd of November last, he was at the New Exchange aforesaid ; for, being on the way towards St. James's, he this examinant, did meet the Portugal Ambassador's own coach coming towards the Exchange, about the Pall-Mall ; and Don Pantaleon being in the same coach, did call this examinant into the said coach, wherein were (he this examinant believes) a knight of Malta, and the lord of Boyne, and some others,

whose names he knows not, being Portuguese ; with whom this examinee went along to the said New Exchange ; and that this examinee, and the said Don Pantaleon, and other Portuguese aforesaid, coming into the said Exchange, one Mr. Philips Howard came to this examinee, and desired him to persuade the said Portuguese to go off the Exchange ; for that there were some above that did stay for them. And this examinee speaking to the said Don Pantaleon to the same effect, he the said Pantaleon answered, that he had no arms, and would offend none ; but he did believe none would offend him, there being but four Portuguese there together at the same time with this examinee, none of them having then any arms ; And this examinee sayeth, that after the said Portuguese had staid there in the Lower-Exchange for some little time, they went up into the upper part of the said Exchange ; and being there, one Mr. Thomas Howard came to the said Don Pantaleon, and demanded satisfaction for an affront offered the night before : and the examinee persuading the said Mr. Howard to be satisfied, the said Mr. Thomas Howard did cease to speak or act any thing else as this examinee did see ; but immediately upon this, the shop-keepers in the said Exchange began to make a noise with shutting up their shops ; and that during the time of discourse between the said Don Pantaleon, Mr. Howard, and this examinee, there was a pistol shot off about the West end of the said Exchange ; and thereupon this examinee did depart from the said Exchange, and did not see any Portuguese, save only the Portuguese aforesaid, before the said pistol was fired off as aforesaid ; but after the said pistol was fired, he did see divers Englishmen upon the said Exchange with their swords drawn ; and that he did also see divers black men there also with their swords drawn, whom he conceives may be Portuguese ; but what were the particular passages there after that time, this examinee says he knows not, neither did he know or hear of any design or appointment by the said Portuguese, to be or act at the said Exchange that night, to injure or affront any persons whatsoever. W. METHAM.

Taken and acknowledged the day and year first above written, before us,

THOS. FOOT, ROBERT TICHBORNE.

[Vol. 2, p. 222.]

Extract of an intercepted Letter to Sir Gervase Clifton.

Tomorrow morning the Portugal Ambassador's brother is to receive his Trial at the Upper-Bench bar in Westminster hall ; these being appointed his judges, viz. the Lord Chief Justice Rolle, (who presides) together with half a dozen counsellors at the law, and as many advocates or doctors of the civil law, all whom take in, so to be their assistant, and a judge with them too, sir Henry Blunt, the great traveller. It is already generally believed that he shall escape.—(Unsubscribed.) July 4, 1654.

The superscription.

To the much honoured Sir Gervase Clifton, knight and baronet, present these most humbly at Clifton in Nottinghamshire.

[Vol. 2. p. 427]

A Justification of the Proceedings against the Portuguese for the Murder of Mr. Greenway, notwithstanding their relation to their Embassador.

That the matter of fact may be truly stated, whereby the insolency and malice of the parties may appear; and to justify our proceedings against them, though relating to the embassador, to set forth—that the fact is murder, and so a sin against the law of God and man, such as by the Levitical law admitted neither pardon nor sanctuary.—Joab was taken from the horns of the altar. No cities of refuge allowed a murderer by the law of Moses, nor privilege of sanctuary by our law.

That the privilege of an embassador cannot exempt him from his trial by the law of this nation. It is a maxim in our law, that no foreign law, either civil or national, can take place in this nation, unless it be part of our law by act of parliament or by a continued practice of the people time out of mind if admitted here, and that supposeth an universal assent of the people, and then it goes for the law of the land. And therefore whatever the civil law is, or Jus Gentium practised by other nations is not applicable to England. Neither will it be any argument to exempt this Portuguese from his Trial for Murder, though some examples be produced (even in this nation) of embassadors dispensed with from the trial of our laws by some of our princes, for practice of treason against the state, which might be upon particular reason of state. And I hold treason which may be contracted by endeavours only, more pardonable than murder, and I do not know any precedent of dispensation with the trial of an embassador for murder or manslaughter, &c.

That upon solemn debate it hath been resolved, by the opinion of learned counsellors and common lawyers, embassadors themselves are to be tried by the laws of this nation, and not to have their privilege.

The Queen of Scots was tried and executed for treason by commission of oyer and terminer.

The Bishop of Ross embassador from the crown of Scotland, was committed for treason, and resolved by the opinion of five learned civilians, that he could not have privilege to exempt him from his Trial. [Camb. Eliz. f. 276, Co. 4 Inst. 152, 153.] So the resolution of Sam. Pelache's case, the embassador of the king of Morocco, wherein the lord Coke cites the opinion of judges of the common law and civilians.

Vivian, the Pope's legate, here was restrained by Hen. 2 for disquieting this state, and forced to swear not to act any thing in 'prejudicium regis et regni' [Benedict in Vita Hen. 2.]

Hen. 3 did the like to the Pope's embassa-

dor, who was fain to fly 'timens pelli sue' (as the record saith). [Record in Scaccario West. chus. 1. 1. sir Tho. Cotton.] Ed. 1 restrained the Pope's embassador, until he received satisfaction for the wrong done.

In the year 1523 Lewis de Prat, embassador from Charles 5, was commanded to his house, for accusing falsely cardinal Wolsey to have practised a breach between Hen. 8. and the Emperor to make amity with the French king.

In 1568 Don Gusman Despes was confined to his house in London, for sending scandalous letters to the duke of Alva. [Sir T. Cotton.]

The like was done to Dr. Alpen and Malvi-set, the French embassadors. Bernardino de Mendosa, for falsely traducing the ministers of State, was restrained, &c. [Sir T. Cotton.] These records and precedents should be perused in the originals that you may be sure to proceed upon safe grounds in citing of them, and I only mention them to show the practice of the law of England, &c.

It is reasonable the law should be so: 1st. for Embassadors and their families have the protection of the law, and if any of them be injured the party that committed the offence must incur the punishment of the laws: [11 Ed. 3. Fitz. Brev. 473.] For if an Englishman rob or kill an Embassador or his servant, he must suffer death, and therefore reason that they who have protection of the law, should submit to the law. [Co. 7 15, in Calvin.]

2nd. It would be destructive to Embassadors if it was otherwise; for if they were not subjected to this law, that the people of this nation may have remedy against them in case of injury, nobody would have commerce with them; so that they might be starved for want of victuals or other commodities, and men would not converse with, if they might do violence to their persons and estates, and must not be punished by this law without appeal to the foreign prince from whence they come. [Hob. Rep. 78. 113. Embassador of Spain's Case.]

3rd. If it were so, then is the English nation, in relation to any injury done them by Embassadors, under the protection (upon the matter) of a foreign prince; for they must appeal to him for justice, and not to their own prince.

4th. Admit the foreign prince would do justice, the same cannot be done without examination of witnesses; and what a length of time and trouble and expence that would take may be easily guessed; it would wear out the prosecutor, and probably spend so much time that witnesses and parties innocent would die in the interim.

5th. If Embassadors had such privilege here, then our Ambassadors must have the like elsewhere: and if an Englishman should kill a Portuguese he must be sent to England to be tried, in which case he must go unpunished, for he cannot be tried, and then Quere, whether it be not so in other countries? It is good to keep to the case in question in case of murder, and not to launch to privileges in general.



Since I writ the letter, I perused the stat. of 27 Eliz. and commission whereby the queen of Scots was tried; and doubt much whether it be to advantage to mention it, because her trial was by special commission framed by Act of Parliament in the nature of an high court of justice. *Quere.*—[Vol. 2. p. 428.]

To his highness the Lord Protector of the Commonwealth of England, Scotland, and Ireland.—The humble Petition of Don Pantaleon de Sa e Meneses, prisoner in Newgate.

Shewing that on the 5th of this inst. July, the petitioner being brought before certain judges at Westminster to answer concerning a crime of Murder objected against him, the petitioner then alledged his agency and employment here, being made a public minister with his brother the Lord Ambassador from the king of Portugal his master, and that he was taken out of the house of residence of himself and his said brother Ambassador, to answer touching the premises, which were supposed to be done during the time of his residence here, for the causes aforesaid. The petitioner prayed allowance of his privilege, and to be tried according to the use and justice of all nations in such cases, and prayed counsel to be allowed him to alledge his privilege, but was denied in his requests; and for fear of certain torments of death, unless he pleaded not to the indictment, which he apprehended would be instantly executed; he pleaded thereto, and hath since received judgment of death; which of how great consequence it is, being as he conceiveth, violation of the rights of Ambassadors in his person, and otherwise, your highness's wisdom may judge.—He prayeth respite of execution by your favour, and that due consideration may be had of him and premises, and execution on the said judgment may not be done, and that he may be committed to his king.

‘DON PANTALEON DE SA E MENESSES.

To his highness the Lord Protector of the Commonwealth of England, Scotland, and Ireland.—The humble Petition of Alvaro Goncalves Pereira, master of the horse to the Lord Ambassador, Sheweth,

That he is innocent of the crime that he is accused of; besides that he was condemned the judges thinking he had submitted to the laws of England, which is a great mistake, for he, not being acquainted with the language, ever said the same that his master's brother said, not understanding any thing that was past, neither having any body to counsel him herein. Therefore he humbly beseeches your highness to consider of it, and other reasons, that do excuse him; and to grant him time, wherein your highness may be better informed here in, and he enjoying the privileges of the Ambassador's family, your highness may take such resolution as you shall think most just and fit. [Vol. 1. p. 616.]

Bordeaux, the French Ambassador in England, to the count de Brienne.

• My lord; You will have without doubt received the articles, which the Lord Protector did send to me; likewise you will have taken notice of the demands of this state, which did oblige me at my audience, which I had on Sunday last, after I had interceded for the brother of the Ambassador of Portugal, to declare unto him in general, &c.

An Extract of a Letter of Intelligence from Paris.

Sir; Yours by this post came to me safe, wherein I see how the Portuguese Ambassador's brother suffered, which is very much considered and looked upon here. Some say, it is gallantly done; others, that it is dangerous for the Protector to use an Ambassador's brother so; others do much admire it, that the Protector had the courage to do the like. However it is conceived some mischief will follow, where the Protector shall get the worst; but God is over all.

Paris 25-15 July, 1554.

Extract of a Letter of Intelligence from Paris, July 29, 1654. [N. S.] (Not signed.)

It is believed your government cannot hold long in that fashion; yet the beholding of the Portugal Ambassador's brother is not displeasing or wonderful to honest men; but the action he committed is worse esteemed, and only taken for madness and temerity, not for any gallantry or courage; so they say, justice should be considered over all things; yet concerning such a person, that grace should take place; which is all here said of that matter.

Letter from Mr. Edward Pashlowe to the Protector's Council. Dated Gravesend Aug. 3, 1651.

Right honorable; I make bold to inform your honours, that this day an attachment was granted out against the Portugal Ambassador's goods, at the suit of William Garfeild, who pretends, that the said Ambassador owes him 52*l* and more. And I being desirous not to suffer the attachment to be perfectly executed without some directions from your honours, I have caused my servants to forbear, until I can be informed from your honours, whether I shall give permission, that the same shall be executed, or no. Therefore I most humbly pray your honours to send me such order therein, as may tend to my security, and according to your honour's good pleasure. [Vol. 2. p. 517.]

Some few decisions relative to the Privileges of Ambassadors and of persons attached to legations, which have been made in our courts of law, are collected in Conyns's Digest, title Ambassador B. (they relate chiefly to the question what servants of an Ambassador are protected against process in civil suits by stat. 7 Anne c. 12, which protection was at one time much abused.) Mr. Ward, in his “*Enquiry*

into the Foundation and History of the Law of Nations in Europe," chap. xvii. has collected and examined several precedents (among others this of Su, and those of the Russian Ambassador in 1708 and of Count Gyllenberg in 1717) and several opinions of jurists respecting the inviolability of Ambassadors.

Towards the end of the reign of James the first, the Spanish Ambassador Inoisa secretly laid before the king a Memorial containing some very grievous and alarming charges against the duke of Buckingham. (See Hacket's Life of archbishop Williams). Upon discovering the fact, the duke, who was very desirous that the Ambassador should be punished, applied for advice to sir Robert Cotton, and obtained from him the following answer, which is printed in the Posthumus of the author and is also among Tanner's MSS. in the Bodleian Library at Oxford.

**A RELATION OF PROCEEDINGS AGAINST AMBASSADORS WHO HAVE MIS-CARRIED THEMSELVES, &c.**

To the high and mighty prince George duke of Buckingham. May it please your Grace; "In humble obedience to your Grace's command, I am emboldened to present my poor advice to this the greatest, and most important cause that ever happened in this state; the quiet of the kingdom, the honour of the prince, the safety of the Spanish ambassador's person exposed hereby to the fury of the people, all herein involved; A consideration not the least for the reputation of the state, and government, though he little deserved it.

"The information made to his sacred majesty by him, That your Grace should have plotted this parliament; wherein if his majesty did not accord to your designs, then by the authority of this parliament to confine his sacred person to some place of pleasure, and transfer the regal power upon the prince: This information if it were made by a subject, by the laws of the realm were high treason, to breed a rupture between the sovereignty and the nobility, either by reports or writings; and by the common law is adjudged no less: The author yet knowing that by the representing the person of a sovereign prince he is by the law of nations exempt from regal trial, all actions of one so qualified being made the act of his master, until he disavow: And injuries of one absolute prince to another, is *factum hostilitatis*, and not treason. The immunity of whom civilians collect as they do the rest of their grounds, from the practice of the Roman state, deducing their arguments from these examples. The Fabii ambassadors from Rome were turned safe from the Chades with demand of justice against them only, although they had been taken bearing arms with the Etrurian their enemies: [Titus Livius 2 dec.] The ambassadors of the Tarquines, 'Morte affligendos' *Romani non judicarunt, et quanquam visum est ut hostium loco essent, jus tamen gentium voluit.* And where those of Syphax had plotted the murder of Masinissa, 'Non

'aliud mihi factum quam quod sceleris sui reprehensi essent,' saith Appian; The ambassadors of the protestants at the council of Trent, though divulging there the doctrine of the churches, contrary to a decree there enacted, a crime equivalent to Treason, yet stood they protected from any punishment: So much doth public conveniency prevail against a particular mischief; that the state of Rome, though in case of the most capital crime, exempted the tribunes of the people from question, during the year of office: [August. de Legibus Antiqu. Roman.] And the civilians all consent, that 'legis de jure gentium indictum est, et eorum corpora salva sint, propter necessitatem legum, ac ne confundant jura commercii inter principes,' the redress of such injuries, by such persons, the example of modern and best times will lead us to. Vivis the Pope's legate was restrained by Henry 2, [Bene dict. in Vita Hen. 2.] for exercising a power in his realm, not admitted by the king, in disquiet of the state, and forced to swear not to act any thing in 'prejudicium regis vel regni,' [Record. in Sencrar. West Claus. Edw. 1.] Hen. 3. did the like to one of the Pope's ambassadors, another flying the realm secretly, fearing, *timens pelli sui*, as the record saith. Edward 1, so restraining another until he had, as his progenitors had, informed the Pope of the fault of his minister, and received satisfaction of the wrongs. In the year 1523, Lewis de Pratt, Ambassador for Charles 5, was commanded to his house, for accusing falsely cardinal Wolsey to have practised a breach between Hen. 8. and his master, to make up the amity with the French king; sir Michael Throgmorton, by Charles 9, of France, was so served, for being too busy with the prince of Condy in his faction. Doctor Man, in the year 1567, was taken from his own house in Madrid, and put under a guard to a straiter lodging, for breeding a scandal (as the Conde Teri said) in using by warrant of his place, the religion of his country, although he alledged the like permitted to Ghusman de Silva their ambassador, and to the Turk no less than in Spain. In the year 1568 Don Ghuernon d' Espes was ordered to keep his house in London for sending scandalous letters to the duke d' Alva unsealed. The bishop of Rosse in the year 1571 was first confined to his house, after to the Tower, then committed for a good space to the bishop of Ely his care, for meddling with more business than belonged to the place of his employment: The like was done to Dr. Alpin and Marvisett, the French ambassadors successively, for being busy in more than their master's affairs. In the time of Philip the 2d, of Spain, the Venetian ambassador in Madrid, protecting an offender that fled into his house, and denying the heads or justices to enter his house, where the ambassador stood armed to withstand them, and one Bodevario a Venetian, whom they committed to prison, for his unruly carriage, and they removed the ambassador unto another house, until they had searched and found the

offender: Then conducting back the ambassador, set a guard upon his house, to stay the fury of the people enraged. The ambassador complaining to the king, he remitted it to the Supreme Council; they justified the proceeding, condemning Bodavario to lose his head, and other the ambassadors servants to the galleys, all which the king turned to banishment, sending the whole process to Inego de Mendoza his ambassador at Venice, and declaring by a public ordinance unto that state, and all other princes, that in case his ambassadors should commit any offence, unworthily, and disagreeing to their professions, they should not then enjoy the privilege of those officers, referring them to be judged by them where they then resided. Bernardino de Mendoza, for traducing falsely the ministers of the state to further his seditious plots, was restrained first, and after commanded away in the year 1586. The last of Spanish instigations that disquieted this state, a benefit we found many years after by their absence, and feel the want of it now by their reduction.

Having thus shortly touched upon such precedend examples, as have fallen in the way, in my poor observation, I humbly crave pardon to offer up my simple opinion what course may best be had of prosecution of this urgent cause. I conceive it not unfit, that with the best of speed, some of the chief secretaries were sent to the ambassador by way of advice, that they understanding a notice of this information amongst the common people, that they cannot but conceive a just fear of uncivil carriage towards his lordship or his followers, if any the least incitement should arise; and therefore for quiet of the state, and security of his person, they were bound in love to his lordship to restrain as well himself as followers until a further course be taken by legal examination where this aspersion begun, the way they only conceived secure to prevent the danger; this fear in likelihood will be the best motive to induce the ambassador to make discovery of his intelligence, when it shall be required: I conceive it then most fit, that the prince and your Grace to morrow should complain of this in parliament, and leaving it so to their advice and justice, to depart the house, the lords at the instant to crave a conference of some small number of the commons, and so conclude of a message to be sent to the ambassador to require from him the charge and proofs; the persons to be sent, the two Speakers of the two houses, with some convenient company of either, to have their maces and ensigns of office borne before them to the ambassador's gate, and then forborne, to shew fair respect to the ambassadors, then to tell them that a relation being made that day in open parliament of the further information to the king by his lordship, they were deputed from both houses, the great council of the kingdom, to the which, by the fundamental law of the state, the chief care of the king's safety and public quiet is committed, they were no less the high court of

Justice, or supersedeas to all others, for the examining and correcting all attempts of so high a nature as this, if it carry truth; that they regarded the honour of the state, for the Catholic's unmoderate using of late the lenity of sovereign grace to the scandal and offence of too many, and this aspersion now newly reflecting upon the prince and others, meeting with the former distaste (which all in public conceive to make a plot to breed a rupture between the king and state, by that party maliciously laid) hath so inflamed and sharpened the minds of most, that by the access of people to term and parliament, the city more filled than usual, and the time itself near May-day (a time by custom apt more to licentious liberty than any other) cannot but breed a just jealousy and fear of some disorder likely to ensue of this information, if it be not aforehand taken up by a fair legal trial in that high court: Neither want there fearful examples in this kind in the ambassadors of Genoa upon a far less ground in the time of parliament, and his house demolished by such a seditious tumult: The parliament therefore, as well to secure his lordship's person, followers and friends, from such outrages, to preserve the honour of the state, which needs must suffer blemish in such misfortunes, they were sent thither to require a fair discovery of the ground that led his lordship so to inform the king, that they might so thereupon provide in justice and honour, and that the reverence they bear unto the dignity of his master, may appear the more by the mannerly carriage of his message. The two, that are never employed but to the king alone, were at this time sent, and that if by negligence of this fair acceptance, there should happen out any such disaster and danger, the world and they must justly judge as his own fault: If upon the delivery of this message the ambassador shall tell his charge, and discover his intelligence, then there will be a plain ground for the parliament to proceed in examination and judgment; But if (as I believe) he will refuse it, then is he *author scandali* both by the common and civil laws of this realm, and the parliament may adjudge it false and untrue, and declare by a public act, the Prince and your Grace innocent, as was that of the duke of Gloucester, 2 Rich. 2, and of York in Henry 6th his time, then may the parliament jointly become petitioners to his majesty, first to confine his ambassador to his house, restraining his departure, until his majesty be acquainted with his offence, and as well for security as for further practice to put a guard upon the place, and to make a proclamation that none of the king's subjects shall repair to his house without express leave: And to send withal a letter, with all speed, of complaint against him to the king of Spain, together with a declaration under the seals of all the nobility and Speaker of the commons, in their names, as was 44 Hen. 3, to the Pope against his legate, and 28 Edw. 1. Requiring such justice to be done in this case; as by the leagues of amity, and law of nations

is usual, which if the king of Spain refuse, or delay, then it is *transactio criminis* upon himself, and an absolution of all animy and friendly intelligence, and amounts to no less than a war denounced. Thus have I by your leave, and command, delivered my poor opinion, and ever will be ready to do your Grace the best service, when you please to command it.

Many particulars concerning Leslie the bishop of Ross, whose Case sir Robert Cotton quotes, may be found in the Trial of the duke of Norfolk, *ante*, vol. 1, p. 957. The Case is also noticed in that of the duke of Hamilton, *ante*, vol. 4, p. 1155. The following are extracted from Camden:

"Since by the confession of all, even of the duke himself, the bishop of Ross was charged as principal contriver of the business, they entered into a serious consultation what should be done with him, being an ambassador. For whilst he (after the manner of other ambassadors) thought he might lawfully promote the interest of his prince by any methods, and that by the sacred and inviolable privilege of ambassadors, he was not to be accountable to another's jurisdiction: he had already committed many irregularities, by raising rebellion, and holding nocturnal cabals with the earl of Southampton and others; and now lately with the English fugitives in the Netherlands, the duke d'Alva, the Spaniard, and the Pope, for invading of England. It was therefore proposed to Daniel Lewis, Valentine Dale, William Drury, Wm. Aubrey, and Henry Jones, learned civilians,

1. "Whether an Ambassador procuring an insurrection or rebellion in the Prince's country, toward whom he is Ambassador, is to enjoy the privilege of an Ambassador?"

2. "Whether he may not, *Jure Gentium* et *Civili Romanorum*, be punished as an enemy, traitor, or conspirator, against that Prince, notwithstanding he be an Ambassador?"

To these two questions they answered: "Touching these two questions, we are of opinion, that an Ambassador procuring an insurrection, or rebellion, in the Prince's country towards whom he is Ambassador, ought not, *Jure Gentium*, et *Civili Romanorum*, to enjoy the privileges, otherwise due to an Ambassador; but that he may, notwithstanding, be punished for the same."

4. "Whether, if the Prince be deposed by the common authority of the realm, and another elected and invested of that crown; the solicitor, or doer of his causes, and for his aid, (although the other Prince do suffer such one to be in his realm) is to be accounted an Ambassador, or to enjoy the privilege of an Ambassador?"

To this they answered, "We do think, that the solicitor of a Prince lawfully deposed, and another being invested in his place, cannot have the privilege of an Ambassador, for that none but Princes, and such other as have sovereignty, may have Ambassadors."

4. "Whether a Prince coming into another

realm, and remaining there under custody and guard, ought, or may have there his solicitor of his causes, and if he have, whether he is to be counted an Ambassador?"

To this they answered, "We do think that a Prince coming into another Prince's realm, and being there under guard, and custody, and remaining still a Prince, may have a solicitor there; but whether he be to be accounted an Ambassador, that dependeth on the nature of his commission."

5. "Whether if such a solicitor be so appointed by a Prince so lying, or coming into another Prince's realm; if the Prince in whose realm, the Prince so in guard, and his solicitor is, shall denounce, or cause to be denounced, to such a solicitor, or to such a Prince under custody, that his said solicitor shall hereafter be taken for no Ambassador; whether then such solicitor or agent can justly claim the privilege of Ambassador?"

To this they answered, "We doe think that the Prince to whom any person is sent in message of Ambassador, may for causes forbid him to enter into his lands, or, when he hath received him, command him to depart; yet so long as he doth remain in the realm, and not exceed the bounds of an Ambassador, he may claim his privilege as Ambassador, or solicitor, according to the quality of his commission."

6. "Whether, if an Ambassador be confederacy, or be aider, or comforter of any traitor, knowing his treason toward that Prince, toward whom, and in whose realm he pretendeth to be Ambassador; is not punishable by the Prince in whose realm and against whom such treason is committed, or confederacy for treason conspired?"

And to this they answered, "We do think that an Ambassador aiding and comforting any traitor in his treason toward the Prince with whom he pretendeth to be Ambassador in his realm, knowing the same treason, is punishable by the same Prince against whom such treason is committed."

"According to these answers of the civilians, Ross being called up from the isle of Ely, and receiving a sharp reprimand, it was declared by the council, that he should be no longer reputed an Ambassador, but be severely punished according to his demerits. He answered, 'That he was the Ambassador of an absolute queen that was unjustly deposed, and had, according to his duty, carefully endeavoured the delivery of his princess, and the safety of both kingdoms: that he came into England with the full authority of an Ambassador under public warrantise, which he had produced; and that the sacred privileges of Ambassadors are by no means to be infringed.' Burghley most gravely informed him, 'That neither the privileges of an Ambassador, nor letters of public warrantise,

\* These queries and answers are thus given in Murdin's State Papers. Camden abridges them.

'could protect Embassadors that offend against the public majesty of a prince, but that they are liable to be punished for the same, else wicked Embassadors might plot against the life of princes without any punishment.' On the other hand, he stiffly maintained, 'That the privileges of Embassadors had never been violated' (to use his own words) '*via Juris* (but *via facti*:' And he pleasantly wished them not to shew him fouler play than the English Embassadors, Throckmorton in France, and Randolph and Tamworth in Scotland, had found; who had raised rebellions, and openly fomented them; and yet suffered no greater punishment, than the being commanded to depart within such a time.' When they began to urge him with testimonies of Englishmen, he gently desired them not to do it, since by a common received custom, which, as he said, was grown into a law, 'The testimony of an Englishman against a Scotchman, or of a Scotchman against an Englishman, was not to be allowed.' After some debates whether this would hold good, unless betwixt the borderers of both kingdoms, and that in cases relating to the frontiers; and whether the English Embassadors had raised rebellions; Ross was committed to the Tower of London; where being kept close prisoner, within a while he answered to all questions, with this proviso, That his answers should not be prejudicial to any. 'He excused the queen of Scots, for that she being a prisoner in the flower of her age, could not but use her utmost endeavours to regain her freedom, since queen Elizabeth denied her access to her presence, debarred her from all hope of her liberty, and openly relieved her enemies. The duke he excused, in that he had done nothing as to the marriage with the queen of Scots, but with the consent of many of the queen's council; nor could he forsake her, though he had promised to do so under his hand and seal, since there was before a mutual engagement of marriage betwixt them.' Lastly, he excused himself, 'For that since he was an Ambassador and a servant, he could not without a sin depart from his duty, and abandon his princess in her distress.' But that 'he proposed the design of seizing on the queen, with no other intent, than to try whether the duke had courage to undertake such an attempt.' The crimes of the other conspirators he cunningly extenuated, but could by no means be brought to tell the names of the gentlemen who had devoted their service to the duke in seizing the queen. But he confessed, that, by the queen of Scots orders, he had, by servants employed betwixt them, treated with the duke, Arundel, Lumley and Throckmorton, and with the lord viscount Montacute by Lumley, about putting the castles in Scotland, the hostages, and the king of Scots, into Englishmen's hands, about renouncing the title, and giving up the English rebels."

Afterwards, under the year 1573, he says, "That England might be the better secured from all domestic attempts upon the queen of

Scots account, John Lesley bishop of Ross (who had served his queen with an approved loyalty, though to the ruin of some, and the danger of more) was dismissed from the Tower, and commanded to depart England. He accordingly withdrew into France, being deadly afraid of the earl of Southampton, (whose life he brought into danger by the discovery he made) and of Henry Howard the duke of Norfolk's brother, for the appeasing of whose displeasure, he wrote an apology for himself. He was scarce gone, but H. Cokin, his private letter-carrier, was apprehended, and by his confession Morgan discovered; who, being a forward man to promote any secret designs for the queen of Scots interest, and very eager to put them in execution, presently fled. Atqlo, the principal physician among the Papists; and Good, both of them doctors of physic; and Francis Berty, were kept in prison for some months, for holding a private correspondence with her by letters; and upon the same account were Henry Goodyer and Richard Lowder had in suspicion.

"In the mean time the bishop of Ross was not wanting in the duty of a most faithful subject to the queen of Scots, but solicited the emperor, the Pope, the French king, and the catholic princes of Germany, who held him in hopes, but performed just nothing."

Mr. Ward cites the following Case from Finet:

"In the year 1627, one Philip Weiseman, a German, who was a kind of purveyor to foreigners in England, having bargained to defray the Embassador of Denmark's expences at a certain rate from Paris to London, made some unreasonable demand upon him on his arrival at the latter place, and that, says Finet, "with much touch to his honour." The Embassador complained to the Lord Chamberlain, who acquainted the King, order was made for the Lord President of the Council, the Lord Chamberlain, and the Vice Chamberlain, to "hear and determine" the business. The cause was examined, and the following Record and Sentence was the consequence:

"Henry, Earl of Manchester, President of the Privy Council of his Majesty of Great Britain; Philip, Earl of Montgomery, Great Chamberlain, and of the Council of State to his said Majesty, being Commissioners and Deputies for his said Majesty to hear the protestation which the Lord Rosenbrance, Embassador Extraordinary to his Majesty of Denmark, shall make against Philip Weiseman, for certain injuries and calumnies which he should speak and write against his person, in prejudice of the honour of the King his master, and of his own particular reputation; having by express commandment from his Majesty adjourned, and examined the foresaid Philip Weiseman, and having understood at the same time, by confrontation, some of the domestics of the said Lord Ambassador, and others; as also examined his letter to the said Lord Ambassador: we find that the said Philip, without any rea-

son or cause, having received more monies than were agreed upon, according to his own confession, hath maliciously and impudently blazed abroad; such words and writings, without having regard to the honour of the person whom he pre-ents, or to his own particular quality: Therefore we have inordered that he be put in safe custody, until he give satisfaction to the foresaid Ambassador, if he thinks it not fit to bring him before the King his master, to be punished according to his demerit. In faith whereof we sign this present instrument this 14th of April 1627. Manchester—Montgomery—Carleton."

"The fellow, persisting stubborn and most averse from submission, was after four or five days restraint in the house of a messenger, delivered by a warrant from the Lord President, and the Lord Chamberlain, from the Messenger's hands to the Ambassador's; who, causing him to be imprisoned in the Counter, by virtue of the said warrant, which gave him power to dispose of him, he was upon the point of being sent to Hamburgh; but his stomach lessening, and his submission made with acknowledgment of his guilt, both by word, and writing, he was at last set at liberty."

In the Case of Owen or Collins, *ante*, vol. 2, p. 381, sir Francis Bacon, Attorney General, laid it down, that "by the Law of Nations if an Ambassador compass and intend death to the person of the king in whose land he is, he may be condemned and executed for treason; but if he commit any other treason than this, it is otherwise: then, he should be sent to his own country." See also vol. 1, p. 1016, and Dr. Story's Case (p. 1087 of the same volume, reported also by Dyer) cited chap. 2, sections 3, and 9 of the Treatise on the Pleas of the Crown by Mr. East, who after speaking of the local allegiance due from foreigners in this country, and of the grounds of such allegiance, says, "The case of an Ambassador is not meant to be included in the foregoing observations. The exception, if any, is grounded on principles of policy and not of justice." And he refers to a chapter (to be published hereafter, as it seems) "*Of persons capable of committing crimes.*"

Coke, 4th Inst. 153, says, "If a foreign Ambassador, being *propter*, committeth here, any crime, which is *contra jus gentium*, as treason, felony, adultery, or any other crime, which is against the Law of Nations, he loseth the privilege and dignity of an Ambassador, as unworthy of so high a place; and may be punished here, as any other private alien, and not to be remanded to his Sovereign but of courtesy. And so of contracts, that be *good jure gentium*; he must answer here. But if any thing be *malum in se, jure gentium*, nor *contra jus gentium*; an Ambassador residing here shall not be bound by any of them."

Hale writes thus: "Here somewhat may be of use to be said touching treasons by ambassadors of foreign princes, wherein although sometimes reason of state and the common interest of princes do *de facto* govern in these cases, yet it will not be amiss to consider the opinions and practices of former times in relation to this matter."

"First, If an Englishman born, though he never took the oath of allegiance, becomes a sworn subject to a foreign prince, and is employed by him into England as his minister, agent, or ambassador, and here conspires against the king's life, he shall be indicted and tried for treason, as another subject should be; and the reason is, because no man can shake off his country wherein he was born, nor abjure his native soil or prince at his pleasure. This was the case of Dr. Story, who had sworn allegiance to the crown of Spain, and was here condemned and executed for treason\*. Vide Camden's Eliz. 14 Eliz. p. 168."

"Secondly, but if a foreigner being the agent, minister, or ambassador of a foreign prince either in amity or enmity with the king of England, come over with or without the king's safe-conduct, and here conspire against the life of the king, or to raise rebellion or war against

\* It seems highly absurd, that a person owing allegiance to any sovereign power, should by that power be recognised under a character so apt as that of ambassador from a foreign state, to require from him services, and to impose on him duties inconsistent with such allegiance. Some years ago it was reported currently, and, as I have reason to believe, truly, that the elector [now king] of Bavaria was disposed to appoint as his minister to our court, sir Benjamin Thompson (the count of Rumford, who was born a subject of Great Britain, and that the British government (most properly as I conceive, notwithstanding Wicquefort's doctrine,) signified, that he could not be received in that station. The maxim '*Nemo potest exuere patriam nec legem debitam ejurare*,' is rigidly maintained in our books; and, by divers statutes, acts by English born subjects, in contravention of that maxim, are severely punished: See Bracton, lib. 3, c. 9. Fleta, c. 2. Stamford, 67. Lord Coke's Commentary upon Littleton, sect. 198. 1 Hale's Pleas of the Crown, 68. East's Pleas of the Crown, c. 2, sections 3, 23, 33. 1 Blackst. Comm. c. 10. 4 Blackst. Comm. c. 6, (pp 71, 87), c. 12, s. 11. Some foreign Jurists, however, maintain a different doctrine. See Vattel, book 1, c. 19, s. 218, 220, 225. Wicquefort's L'Ambassadeur, &c. liv. 1, 111, and also his Memoires pour les Ambassadeurs. Wicquefort, however, in his section entitled, "*Le Prince peut employer des Etrangers en ses Ambassades mesmes dans leur Patrie*," observes, that, "*En Angleterre les sujets ont une obligation plus forte et plus particuliere qu'ailleurs en vertu du Droit que l'on y appelle Allegiance.*" See, too, Pecquet's Esprit des Maximes Politiques, c. 21.

him, some have been of opinion, that he may be indicted of treason; but by the civilians he cannot, because he came in as a foreign ambassador representing the person of his prince, and therefore is not to be so dealt with in such case, but by the law of nations may be dealt with as an enemy, not as a traitor; and though he have the protection and safe-conduct of the king of England, yet it is under a special capacity, and for a special end, namely, as a foreign agent; but if he be criminally proceeded against, it must be as an enemy by the law of war or nations, and not as a traitor; but how far and in what cases he may be dealt with as an enemy, remains to be farther considered. Camden's Eliz. sub anno 1571, p. 164.

"Thirdly, therefore those, that are most strict after the rights and privileges of ambassadors, yet seem to agree, that if he do not only conpire the death of the king or the raising a rebellion against him, but actually attempt such an act, as actually or interpretatively is a consummation thereof, though possibly the full effect thereof do not ensue, yet he may be dealt withal as an enemy, and by the law of nations he may be put to death, as if he should stab or poison the prince, and yet doth not kill him, or raise an actual rebellious army, or should levy an actual war against the prince to whom he was sent, and in that prince's country, as Fabius the Roman ambassador to the Gauls, by challenging and fighting with the champion of the Gauls; Plutarch in *vita Nume*, the prince, to whom he is sent, may, without consulting the prince that sends him, inflict death upon such an ambassador by the law of nations, as an enemy: 'Consummata autem sunt, que cunque producta sunt, quo producti ab hominibus solent, et que delinquendi finem statuere solemus.' Vide Albericus Gentilis, lib. 2, cap. 2, de legationibus."

"Fourthly, But in case of a bare conspiracy against the life of the king, or a conspiracy of a rebellion or change of government, *horarum rerum molimina*, there is great diversity of opinion among learned men, how far the privilege of an ambassador exempts him from penal prosecution as an enemy for such conspiracies or inchoinate attempts, that do not proceed farther than the machination, solicitation, or conspiracy.

"Upon an attempt of this nature by the bishop of Ross, agent and ambassador of the queen of Scots, 14 Eliz. the question was propounded to Lewes, Dale, Drury, Aubry, and Jones, doctors of law, viz.

"Whether an ambassador, who stirreth up a rebellion against the prince to whom he is sent, should enjoy the privileges of an ambassador, and not be liable to the punishments of an enemy?"

"They answered, That such an ambassador hath by the law of nations, and by the civil law of the Romans, forfeited all the privileges of an ambassador, and is liable to punishment. See the rest of the resolutions touching this matter, Camden's Eliz. sub anno 1571, p. 164, 165, 370.

"Hereupon he was committed to the Tower, but yet no criminal process against him as an enemy.

"And Mendoza the Spanish ambassador, who here in England fostered and encouraged treason, was not dealt with according to the utmost severity, that possibly in such cases might be used, but was only sent away, sub anno 27 Eliz. Camden's Eliz. p. 296. The lord L'Aubespine also, the French ambassador, that conspired the queen's death, was not proceeded against criminally, but only reprov'd by Burghley, and advised to be more careful for the future. Camden's Eliz. sub anno 1537, p. 373, 379.

"And upon these and some antient instances among the Romans and Carthaginians, learned men have been of opinion, that an ambassador is not to be punished as an enemy for traitorous conspiracy against the prince to whom he is sent, but is only to be remitted to the prince that sent him. Albericus Gentilis de Legationibus, lib. 2, cap. 13. Grotius de Jure Belli, lib. 2, cap. 13, who gives these two instances in confirmation thereof.

"The truth is, the business of ambassadors is rather managed according to rules of prudence, and mutual concerns and temperments among princes, where possibly a severe construction of an ambassador's actions, and prosecutions of them by one prince, may at another time return to the like disadvantage of his own agents and ambassadors; and therefore they are rather temperaments measured by politic prudence and indulgence, than according to the strict rules of reason and justice; for surely conspiracies of this kind by ambassadors, are contrary to the trust of their employments, and may be destructive to the state whereunto they are sent, and according to true measures of justice deserve to be punished, as acts of enmity, hostility and treachery, by private persons.

"And although of all hands it is admitted, that the prince, to whom the ambassador is sent, is the judge of the miscarriage of such foreign ambassador, without any application to the master from whom he is sent, and without any actual deditio or giving him up to the judgment of the law; yet they assign this reason of the difference between a bare conspiracy or machination against the prince, and an actual attempt of treason, whether against his person or government, which hath attained as great a consummation as such ambassador is able to effect, as procuring the wounding of the prince, or an actual attempt to poison him, though death ensue not, or an actual raising of a rebellious army against him; because in these latter the mischief is consummate, as far as the ambassador could effect it, and so prohibited not only by the civil and municipal laws, but by the laws of nations; but inchoinate machinations, according to their opinions, are raised to the *crimen læsæ majestatis*, by civil or municipal laws or constitutions; and they think it too hard, that an ambassador or foreign agent, who doth *sustinere personam principis*,

should be obnoxious to a capital punishment for bare machination or conspiracy, which is a secret thing and of great latitude; but this, as I have said, is rather a prudential and politic consideration, and not according to the strict measure of justice.

"But now, although it should be admitted that a foreign ambassador committing a consummate treason is not to be proceeded against as a traitor, but as an enemy; yet if he or his associates commit any other capital offence, as rape, murder, theft, they may be indicted and proceeded against by indictment in an ordinary course of justice, as other aliens committing like offences; for though those indictments run *contra pacem regis*, yet they run not *contra libertatem suam debitum*; and therefore, when in the late troubles, the brother and servants of the Portugal ambassador committed a murder in the Exchange, they were tried and convicted by a special commission of Oyer and Terminer, directed to two judges of the common law, some civilians, and some gentlemen, to proceed according to the ordinary course, 'secundum legem et consuetudinem regni Angliæ,' whereupon some of them were convicted by jury, and had judgment; and, as I remember, some of them were executed. And yet many civilians will allow the same privilege to the *comites legati*, as to the ambassador himself.

"And the difference between proceeding against an alien (whether ambassador or other) in cases of felony and treason, is well illustrated by the book of 40 Ass. 25, where a Norman captain of a ship, with the help of English mariners, committed robbery and piracy upon the narrow seas; the English pirates were convicted and attain of treason, but the Norman captain was attain of felony, but not of treason, because it could not be said *contra libertatem suam debitum*."

Mr. Justice Foster, in the introduction to his Discourse on High Treason, calls the law respecting this matter "extremely right and expediently considered as a general rule," yet he seems to have felt that even the principles of natural equity, as well as prudential considerations grounded on reasons of state, should occasionally induce the crown to dispense with the execution of it. Mr. Macdonald, whose case he reports, was, he says, "pardonèd upon very equitable and easy terms." Mr. Christian takes occasion to remark, that Macdonald's "is certainly an extreme case, and we should have reason to think our law deficient in justice and humanity, if we could discover any intermediate general limit to which the law could be relaxed consistently with sound policy or the public safety." Upon the whole, however, it must be confessed, that though the law strictly asserts and severely enforces the incapacity of English born subjects to free themselves from the obligations of their allegiance, and punishes acts committed in derogation thereof, (See in addition to East and Blackstone ubi sup. the statutes abstracted in Mr. Christian's Note at the end of Blackst. Comm.

book 4. chap. 12), it affords ample facilities, and holds out inducements to the subjects of other states to infringe the duties of the allegiance which they owe to such states. See Bl. Comm. b. 1, ch. 10, and the Statutes enumerated towards the end of that chapter.

Foster as to this matter says,

"The case of an Ambassador, or his attendants, not being subjects of Great Britain, mentioned by lord Hale, doing acts which in a subject would amount to high treason, will, as his lordship observeth, be always governed" [one might have expected Foster to cite with more scrupulous fidelity] "rather by prudential considerations, or what are generally called reasons of state, than by any fixed rules of law: and as ambassadors generally act under direction and by orders from their sovereigns, they have seldom been proceeded against farther than by imprisonment, seizing their papers and sending them home in custody. Which was done in the case of count Gyllenborg the Swedish minister in the late king's time.

"But whatever proceedings be against them for state-crimes, they are to be considered at the worst but as enemies subject to the law of nations; never as traitors subject to the municipal laws; and owing allegiance to the crown of Great Britain; unless perhaps in case of attempts directly and immediately against the life of the king; in which case no orders from their sovereigns can be presumed, or, if in fact produced, would justify or excuse: and therefore I shall not take their case into consideration in this place. And for the same reason I say nothing of the case of spies taken here in time of war, actual hostilities being on foot in the kingdom at that time, nor of prisoners of war.

"But for murder and other offences of great enormity, which are against the light of nature and the fundamental laws of all society, the persons mentioned in this section are certainly liable to answer in the ordinary course of justice, as other persons offending in the like manner are: for though they may be thought not to owe allegiance to the sovereign, and so to be incapable of committing high treason, yet they are to be considered as members of society; and consequently bound by that eternal universal law by which all civil societies are united and kept together."

The following is Blackstone's summary on the subject:

"The rights, the powers, the duties, and the privileges of ambassadors are determined by the law of nature and nations, and not by any municipal constitutions. For, as they represent the persons of their respective masters, who owe no subjection to any laws but those of their own country, their actions are not subject to the control of the private law of that state wherein they are appointed to reside. He that is subject to the coercion of laws is necessarily dependent on that power by whom those laws were made: but an ambassador



ought to be independent of every power, except that by which he is sent; and of consequence ought not to be subject to the mere municipal laws of that nation wherein he is to exercise his functions. If he grossly offends, or makes an ill use of his character, he may be sent home and accused before his master, who is bound either to do justice upon him, or avow himself the accomplice of his crimes. But there is great dispute among the writers on the laws of nations, whether this exemption of ambassadors extends to all crimes: as well natural as positive; or whether it only extends to such as are *mala prohibita*, as coining, and not to those that are *mala in se*, as murder. Our law seems to have formerly taken to the restriction, as well as the general exemption. For it has been held, both by our common lawyers and civilians \*, that an ambassador is privileged by the law of nature and nations; and yet, if he commits any offence against the law of reason and nature, he shall lose his privilege: and that therefore, if an ambassador conspires the death of the king in whose land he is, he may be condemned and executed for treason; but if he commits any other species of treason, it is otherwise, and he must be sent to his own kingdom. And these positions seem to be built upon good appearance of reason. For since, as we have formerly shewn, all municipal laws act in subordination to the primary law of nature, and where they annex a punishment to natural crimes, are only declaratory of and auxiliary to that law; therefore to this natural universal rule of justice ambassadors, as well as other men, are subject in all countries; and of consequence it is reasonable that, wherever they transgress it, there they shall be liable to make atonement. But, however these principles might formerly obtain, the general practice of this country, as well as of the rest of Europe, seems now to pursue the sentiments of the learned Grotius, that the security of ambassadors is of more importance than the punishment of a particular crime. And therefore few, if any, examples have happened within a century past, where an ambassador has been punished for any offence, however atrocious in its nature †.

\* Mr. Ward takes notice that Blackstone quotes only common Lawyers, and conjectures that the only civilians whom he had in his thoughts were the five mentioned above, in the Case of the Bishop of Ross.

† “Upon this passage the learned editor of the late editions of the Commentaries (after an erroneous notice of this Case of Don Pantaleon Sa, into which as I have already mentioned he appears to have been misled by Hume), says, “Vattel with irresistible ability contends, that the universal inviolability of an ambassador is an object of much greater importance to the world than their punishment for crimes however contrary to natural justice. ‘A minister,’ says that profound writer, ‘is often charged with a commission disagreeable to the prince to whom he is sent. If this prince has any power

“In respect to civil suits,” proceeds Blackstone, “all the foreign jurists agree, that neither an ambassador, or any of his train or *comites*, can be prosecuted for any debt or contract in the courts of that kingdom wherein he is sent to reside. Yet sir Edward Coke maintains, that, if an ambassador make a contract which is good *jure gentium*, he shall answer for it here. But the truth is, so few cases (if any) had arisen, wherein the privilege was either claimed or disputed, even with regard to civil suits, that our law-books are (in general) quite silent upon it previous to the reign of queen Anne; when an ambassador from Peter the Great, czar of Muscovy, was actually arrested and taken out of his coach in London, for a debt of fifty pounds which he had there contracted. Instead of applying to be discharged upon his privilege, he gave bail to the action, and the next day complained to the queen. The persons who were concerned in the arrest were examined before the privy council, (of which the lord chief justice Holt was at the same time sworn a member), and seventeen were committed to prison: most of whom were prosecuted by information in the court of Queen’s Bench, at the suit of the attorney general, and at their trial before the lord chief justice were convicted of the facts by the jury, reserving the question of law, how far those facts were criminal, to be afterwards argued before the judges; which question was never determined\*. In the mean time the

over him, and especially if his authority be sovereign, how is it to be expected that the minister can execute his master’s orders with a proper freedom of mind, fidelity, and firmness? It is necessary he should have no snares to fear, that he cannot be diverted from his functions by any chicanery. He must have nothing to hope, and nothing to fear, from the sovereign to whom he is sent. Therefore, in order to the success of his ministry, he must be independent of the sovereign’s authority, and of the jurisdiction of the country, both civil and criminal.’ B. 4. c. 7. s. 92, where this subject is discussed in a most luminous manner. The Romans, in the infancy of their state, acknowledged the expediency of the independence of ambassadors; for when they had received ambassadors from the Tarquin princes, whom they had dethroned, and had afterwards detected those ambassadors in secretly committing acts which might have been considered as treason against the state, they sent them back unpunished; upon which Livy observes, ‘et’ *quoniam visi sunt commississe, ut hostium loco essent, jus tamen gentium valuit*. Lib. 2. c. 4. When Bomilcar, ‘qui Romam fide publica venerat,’ was prosecuted as an accomplice in the assassination of Marcellus, Sallust declares, ‘fit reus magis ex æquo’ *‘bonoque ex jure gentium.*’ Bell. Jug. c. 35.

\* In 3 Burr. 1480. lord Mansfield declares, that ‘the statute of queen Anne was not occasioned by any doubt, whether the law of nations, particularly the part relative to public

czar resented this affront very highly, and demanded that the sheriff of Middlesex, and all others concerned in the arrest, should be punished with instant death. But the queen (to the amazement of that despotic court) directed her secretary to inform him, 'that she could inflict no punishment upon any, the meanest, of her subjects, unless warranted by the law of the land: and therefore was persuaded that he would not insist upon impossibilities.' To satisfy however the clamours of the foreign ministers (who made it a common cause) as well as to appease the wrath of Peter, a bill was brought into parliament, and afterwards passed into a law, to prevent and punish such outrageous insolence for the future. And with a copy of this act, elegantly engrossed and illuminated, accompanied by a letter from the queen, an ambassador extraordinary was commissioned to appear at Moscow, who declared 'that though her majesty could not inflict such a punishment as was required, because of the defect in that particular of the former established constitutions of her kingdom, yet, with the unanimous consent of the parliament, she had caused a new act to be passed, to serve as a law for the future.' This humiliating step was accepted as a full satisfaction by the czar; and the offenders, at his request, were discharged from all farther prosecution.

"This statute recites the arrest which had been made, 'in contempt of the protection granted by her majesty, contrary to the law of nations, and in prejudice of the rights and privileges, which ambassadors and other public ministers have at all times been thereby possessed of, and ought to be kept sacred and inviolable: wherefore it enacts that for the future all process whereby the person of any ambassador, or of his domestic or domestic servant may be arrested, or his goods distrained or seized, shall be utterly null and void; and the persons prosecuting, soliciting, or executing such process shall be deemed violaters of the law of nations, and disturbers of the public repose: and shall suffer such penalties and corporal punishment as the lord chancellor and the two chief justices, or any two of them, shall think fit.\* But it is expressly provided, that

'ministers, was not part of the law of England, and the infraction criminal, nor intended to vary an iota of it.' And he proceeds to say, that lord Talbot, lord Hardwicke, and lord Holt, were clearly of the same opinion. But the infraction of the law of nations can only be a misdemeanor punishable at the discretion of the court, by fine, imprisonment, and pillory; and therefore, lord Mansfield says, the persons convicted were never brought up to receive judgment; for 'no punishment would have been thought by the czar an adequate reparation. Such a sentence as the court would have given, he would have thought a fresh insult.'—Christian.

"\* Perhaps it was intended as a compliment to the czar, that the offender is deprived of the

no trader, within the description of the bankrupt laws, who shall be in the service of any ambassador, shall be privileged or protected by this act; nor shall any one be punished for arresting an ambassador's servant, unless his name be registered with the secretary of state, and by him transmitted to the sheriffs of London and Middlesex. Exceptions that are strictly conformable to the rights of ambassadors, as observed in the most civilized countries. And, in consequence of this statute, thus declaring and enforcing the law of nations, these privileges are now held to be part of the law of the land, and are constantly allowed in the courts of common law."

Mr. Ward mentions the Case of another Ambassador which happened about this time.

"In 1654, M. de Bass (Wicquefort calls him de Bas. In Thurlow the spelling is Baas,) Minister from France to Cromwell, was accused of a conspiracy against his life. The Council endeavoured to make him undergo examination, but he refused, saying, 'that although he would communicate with Cromwell personally, and prove to him that he was not privy to the design; yet he would not submit to interrogatories before a Judge; for being a public Minister, he would by so doing offend against the dignity of his Master, to whom alone he was accountable for his actions. The Council retired to consult what was to be done with him, and he persisting in his refusal to answer, they contented themselves with ordering him to depart the country in four and twenty hours.' (Wicquefort, it will appear, says forty-eight hours.) Mr. Ward professes to take his account from Wicquefort, and 2 Thurlow's State Papers.

The following is Wicquefort's story: "En l'an 1654, M. de Bas, envoyé de France en Angleterre, fut accusé d'avoir eu part à une conspiration qui s'étoit faite contre la personne de Cromwell. Un nommé Naudin médecin Parisien l'avoit mis au nombre des complices et il y avoit d'ailleurs des preuves si fortes contre de Bas que le conseil l'ayant fait venir pour l'interroger et savoir la vérité de sa bouche celui-ci dit qu'il pourroit bien répondre et déclarer qu'il n'avoit point de connaissance de l'affaire dont il ne s'étoit point mêlé. Qu'il ne feroit point de difficulté non plus d'informer Cromwell en particulier par manière d'éclaircissement de ce qu'il en savoit mais 'qu'il n'étoit pas obligé de subir interrogatoire devant le juge ny de répondre en justice parce qu'estant Ministre public il pécherait contre la dignité du Roy son maistre à qui seul il estoit obligé de rendre

Trial by Jury; and as he is to suffer any corporal punishment that two of these three judges may think fit to inflict, the czar would be induced to believe, that any future requisition of instant death could be complied with; but as the statute has not made the offence felony, of course this punishment cannot extend to the privation of life."—Christian.

'compte de ses actions.' Surquoy Cromuël et cinq des sept conueillers qui faisoient tout le Conseil s'estant retirés dans une autre chauxbre et rentrés quelque temps après ils demanderent à de Bas s'il persistoit à ne point vouloir répondre et parce qu'il dit 'qu'il ne répondroit point' on luy ordonne de sortir du Royaume dans deux fois vingt quatre heures. Il estoit suffisamment convaincu d'avoir conspiré contre Cromuël et neantmoins cet usurpateur qui avoit bien fait voir en d'autres occasions qu'il ne consideroit pas fort les Ambassadeurs et qui en ce temps là n'avoit pas plus besoin de la France que la France avoit besoin de luy jugea que tout ce qu'on pouvoit faire à de Bas sans violer le Droit des Gens c'estoit de le faire sortir de l'isle.

Of the two passages in Thurloe's State Papers, cited by Mr. Ward, as the other authority for his narrative, the first contains merely the informations given by certain witnesses against le Baas, and the second, so far as it goes, may be thought to ~~improve~~ the representations of Wicquefort and Mr. Ward. No great civility is displayed by ordering a gentleman who is in London to quit England within the space of twenty-four or forty-eight hours. It appears, moreover, that the Ambassador was civilly sent away, 'for his master's sake.' There is room for a suspicion that Mr. Ward had not consulted all the books to which he refers. In page 149, of his second volume, he makes a slight mistake in the title of Wicquefort's work.

The passages in Thurloe are these :

An Information concerning Monsieur de Baas.

"I being in discourse with Mons. de Baas the day he went from London, he told me that he was occasioned to go away by a deposition of Naudin to the Lord Protector, by whom he was sent for some days ago, with an intention to examine him before many of his council, not considering he was a royal commissioner, whereof he was very sensible, saying, that if the Protector had spoken to him in private, he would have given him satisfaction of the things, of which he was accused by the said Naudin, whom he called an indiscreet man, his own meaning having not been to attempt any thing against the Protector, but only to know what could be attempted. And after some discourse betwixt Mons. de Baas did confess, that he ever since some weeks had enquired from D. Naudin, whether he knew not among his own acquaintance a good valiant and understanding gentleman, in whom the soldiers should have confidence, and who also should have interest amongst the gentry, both for to divide the army, and for to raise secretly money and troops against the power newly settled in England. To this answered Naudin, that he knew such a gentleman, and he believed many able ones should be ready to follow on him in the same design, if there was any hope of relief and help from another place. Mons. de Baas said to this, that he being a public minister, he would assure him, that the

crown of France should doubtless deliver money enough by his own hands for the payment of such an enterprize ; and that would appoint a good recompence in France or other parts to the beginners of the said design, if so was, that they would not come to the end of it : besides, that it was a glorious way, by which the king of Scots (whose intention surely was free in matter of religion) should be restored, and called again, both by many provinces of England, and several officers and soldiers of the Protector's army.

"D. Naudin answered to this, that he durst not, nor had the power of attempting such things himself ; but that he would acquaint some with the said matter and offers.

"Mons. de Baas said this before he went away, that notwithstanding all these discourse, his intention was not to go further with Naudin ; but he knew another way of hurting England, which he had not communicated yet."

The Examination of Theodore Naudin, taken the fifth day of June, 1654.

"Who saith ; That about April last Mons. Baas, agent of the king of France, residing here, sent unto this examinant, by one Mons. Sharnier, and desired to speak with him ; and accordingly, the examinant went to the said Mons. Baas to his house in Covent-garden in the morning, where he found him in bed ; and then nobody being in the room, the said Mons. Baas, after mutual salutations, did ask the examinant of several particular things relating to this commonwealth, as what forces there were in England, and whether the examinant knew major general Harrison, and some other things, which he doth not now remember ; but did observe, that the said Mons. Baas was very inquisitive, which made the examinant suspect he had some design against this state ; but at that conference he acquainted the examinant with nothing in particular. He farther saith, that a little while after he went again to the said Mons. Baas ; and that then he told this examinant, that he did fear that the Protector had no mind to make peace with France ; and that therefore he had a design to trouble the affairs of England, and to make divisions in the army ; and other words to that effect ; and asked this examinant, whether he knew not some able valiant persons, who had interest in the army, to undertake this design ; whereto this examinant answered, he would endeavour to find out such persons, and that he hoped to do it. And this examinant did presently after acquaint colonel Buller with this discourse, and what design the said Mons. de Baas had. And the said Buller wished the examinant to proceed on with Baas ; and thereupon this examinant did repair to the said Mons. de Baas, and acquainted him, that there was a person of honour, a friend of his, that would undertake this business ; but that this could not be carried on without money, and the orders and countenance of the cardinal ; and that if that were had, other persons

would join too. That the said Mons. de Baas did embrace this with much gladness; and said, that he, being a public minister, would assure him, that the cardinal would be glad of the news; and that France would contribute money, and such other things as were necessary for the carrying on this design; and other words to the same purpose. And said, that he would write to the cardinal about it; and did not question but to have a sudden answer. And this examinant further saith, that he, at the desire of the said Baas, went unto him, and had conference with him about the same business, and was usually with him every post-night; but saith, he never saw any answer the cardinal did write, nor knows whether he did write at all. This examinant saith, that in all this discourse he intended nothing of hurt against the government; but was desirous to find out the design of the said Mons. Baas, perceiving by his inquisitiveness, he had somewhat of design; and did accordingly, about eight days before his imprisonment, acquaint the said colonel Buller, that he would acquaint the Protector with it, the business being then quite put off; and further saith not.

THEO. NAUDIN."

The Information and Examination of colonel Buller, taken the day of

"That upon Tuesday morning the 18th of April 1654, Dr. Naudin came early to my lodging, where he desired me to walk alone with him in James's Park; where as soon as we were come, he began to praise and extol me with great admiration, admiring that a person of my quality and experience, with my travels and languages, and so great a soldier, and a person of so much courage and resolution, would suffer myself and services to be so slighted and abused, and myself and country to be enslaved; and that I would not think of a way to make me great, which was in my power to do; and how fit a person I was for it; expressing how much it was for God's glory, and freeing my country from this slavery they were now under, saying, Portugal, Naples, and divers others had thrown off their tyrants, and had and did keep their country ever since to themselves; and that it was in my power, not only to make myself great now, but to posterity for ever: and that I was not less in the world than any other, and had as much right for to govern as any man; and that giving liberty of conscience, I might be sure of all the Anabaptists, Levellers, and Independents would be for me, and stand to me, besides all discontented persons, and many presbyterians, and cavaliers; and desired me to be secret, which he wished me for God's sake to do; for otherwise he must perish, if he were known; he proffering me, if I would join with him to cut off the Protector, he would procure me money enough from the king of France's ambassador; and that if I would join with him to cut off the Protector, I should leave it to him to continue and manage the business, which he said was feasible, and nothing to do;

adding farther, that after the Protector was cut off, all that were in command, from the general to the least officer, should be in command but eight days, and every one take their turn; and this would make all the common soldiers to join with me, and all other discontented persons; and that for me to do this action, it was nothing at all, if I would undertake it; saying, that if I would not, although he had never been a soldier, yet he had as much courage to do this action as any man whatsoever; and therefore he pressed me to give my consent, and then he would go to the French ambassador about it. I thought it fit to put him off four days, at the end of which I condescended he should go; and accordingly the 22nd of April he went to Mons. le Baas in the morning, and was near two hours alone with him, before he was out of his bed, he commanding all his servants to go out of the chamber. So when they were all alone, the doctor began thus to say: Sir, I am one, that is a lover of his country, and ready to do it service; for you see this tyrant and devil the Protector, who holds now his sword to your throats in France, either to have his own terms by a treaty, (which he is now beginning with you) or to cut your throats. Mons. le Baas desired to know, how he could help him, or serve his country. To which the doctor replied, that if Mons. le Baas would help him with money, there were persons of courage and quality, that would undertake a design with him, to cut off the Protector, and make a division here in England; which motion Mons. le Baas did like very well, and did give him many thanks, and embraced it cordially. And accordingly he sent letters away to the cardinal by the next post for his order, which packet Mons. le Baas sent over with a merchant's son to Calais, on purpose, whom the doctor named, saying, he knew him; but I have forgotten his name: but the governor of Calais sent the letters away; for Mons. le Baas told him he was confident the cardinal would be glad of the news, and embrace it; but he, of himself, could not undertake to act, till he had the cardinal's order. To which the doctor replied, he knew that very well; for although 30 or 40,000*l.* would be able to begin the business, yet it would cost many millions to carry it on; and that after the cardinal had approved of the design, he would go over on purpose to the cardinal about the business, which Mons. Baas liked very well, and told him, that the king and cardinal knew, that the Protector had sent divers scouts, which lie in France as his creatures to carry on his designs; and that they knew them all, and all that they had spoken to any of quality, that could help them, and what answer they had given them again; and that they had a vigilant eye on them. And then Mons. Baas desired the doctor to dine with him, and to come often to him; but he told him, he came not to him for his meat, but for the business, which was treated of; and that in case he should dine with him, or

come too often to him, he might be taken notice of; which Mr. Baas did commend him for it. So the doctor went once or twice a week to correspond with him, and for to have the cardinal's answer; which Mr. Baas did faithfully promise him, and desired the doctor to get him certain and private news, how affairs went in Scotland, and to procure him a true list of the strength of the army in England and Wales, and how and where they were quartered, and the number in each garrison, and also of the strength of the army and garrisons in Ireland; which the doctor did very much trouble me, both for a list and private news; and to try to get some in command for to join in the design, being importuned by Mr. Baas, who had promised not to let any man here know any thing; but afterwards did confess to the doctor, that he had told Mr. Bourdeaux, the ambassador, and his own brother; and that Mr. Bourdeaux was inquisitive to know, who it was that had treated with him; but Mr. Baas would not tell him. So Mr. Bourdeaux asked him, Whether it was not the big man, the colonel with the great mouth, who had been so often with him, and proffered to undertake to do very great matters against the Lord Protector here? To which Mr. Baas replied, It was another, and not he; but the doctor was with Mr. Baas once or twice a week, for five or six weeks together, treating about the design."

#### A Letter of Intelligence.

Sir, *Paris, July 18, 1651.* [N. S.]

"Since my former I have only to add, besides what you now have in my letter of occurrences, that from court, of Mons. de Baas nothing is renewed; but the king and cardinal, having the Protector's letter, consult what is to be

done. A complimentary answer may be sent; and if the Protector moves not in it, Mazarin will easily let the matter pass. The cardinal and council are so busy, that Arras may be relieved, Stenay taken, and their army increase and maintained, that they think less of their business with England; and Mazarin says, that he will do well enough with England yet, and that Mons. Bourdeaux will do all. And indeed Mons. Bourdeaux gives now more hopes of success to his negotiation, than when de Baas was there. This de Baas being sent away so civilly by the Protector, is a great honour to his highness here; for few would do him in such cases that honour for any master's sake.

"All or most here are yet of opinion, the Protector is subject to many dangers yet; wherefore he is to have a care, for so much smoke cannot be without a fire. For R. C. is gone to Germany, as you had before; he received the sums of money from this court; and I can assure you, Mazarin sent within these four weeks supplies of monies from Holland to Middleton. R. C. will raise some men in Germany, and go with them into Scotland, if his majesty shall be there visible. Wherefore, if you design to be free, put an end with all speed (if possible) to the war in Scotland. R. C. is to receive considerable succours in Germany; and I have it from such a hand you would give credit to, that he received from England, before he left Paris, 100,000 crowns, to relieve Scotland, with assurance, that if general Monk was defeated, and the royalists march towards England, they should not want assistance in England.

"A second consideration of trouble to your Protector is, the ensuing parliament; but I presume he is wise enough to prevent that with ease, having so done greater matters."

### 195. The Trial of JOHN GERHARD, PETER VOWELL, and SOMERSET FOX, before the High Court of Justice, for High Treason, in conspiring to Murder the Lord Protector.\* 6 CHARLES II. A. D. 1654.

Friday, June 30, 1654.

THE High Court of Justice met this day in the Painted-Chamber. Mr. Bond prayed with them about half an hour. The court then sat,

\* "Discontents" says Clarendon, "were general over the kingdom, and among all sorts of people, of what party soever. The Presbyterians preached boldly against the liberty of conscience, and monstrous licence that sprung from thence; and they who enjoyed that licence were unsatisfied with the Government as any of the rest, talked more loudly, and threatened the person of Cromwell more than any. But into these distempers Cromwell was not inquisitive; nor would give those men an oppor-

and presently adjourned to the Court of Chancery prepared for their sitting: the Lord Commissioner Lisle was President, Mr. Phelps clerk, serjeant Glyn, Mr. Prideaux, and Mr. Ellis, Counsel for the Commonwealth.

tunity to talk, by calling them in question, who, he knew, would say more than he was willing any body should hear; but intended to mortify those unruly spirits at the charge of the king's party, and with the spectacle of their suffering upon any the most trivial occasion. And if, in this general licence of discourse, any man who was suspected to wish well to the king, let fall any light word against the Government, he was sure to be cast in prison, and to be pursued with all possible severity and cruelty; and he

The court was called (each member by name), and the ordinance empowering them read. The prisoners to be tried were, Mr. John Gerard, gentleman; Mr. Peter Vowel, schoolmaster of Islington; and Somerset Fox.

could not want frequent opportunities of revenge this way. It was the greatest consolation to miserable men, who had, in themselves or their friends, been undone by their loyalty, to meet together, and lament their conditions: and this brought on invectives against the person of Cromwell; Wine and good fellowship, and the continuance of the discourse, disposing them to take notice of the universal hatred that the whole nation had of him, and to fancy how easy it would be to destroy him. And commonly there was, in all those meetings, some corrupted person of the party, who fomented most the discourse, and, for a vile recompence, betrayed his companions, and informed of all, and more than had been said. Whereupon a new plot was discovered against the Commonwealth and the person of the Protector, and a High Court of Justice was presently erected to try the criminals; which rarely absolved any man who was brought before them. But to this kind of trial they never exposed any man but those of the king's party; the other, of whom they were more afraid, had too many friends to suffer them to be brought before such a tribunal; which had been first erected to murder the king himself, and continued to root out all who adhered to him. No man, who had ever been against the king (except he became afterwards for him) was ever brought before that extravagant power; but such were remitted to the trial of the law by juries, which seldom condemned any.

"The very next month after the peace was made, for the better establishment of Cromwell's empire, a High Court of Justice was erected for the trial of persons accused of 'holding correspondence with 'Charles Stuart' (which was the style they allowed the king) 'and for having a design against the life of the Protector, to seize upon the Tower, and proclaim the king.' The chief persons they accused of this were, Mr. Gerard, a young gentleman of a good family, who had been an ensign in the king's army, but was not at present above twenty two years of age; the other, one Mr. Vowel; who kept a school, and taught many boys about Islington. Mr. Gerard was charged with 'having been at Paris, and 'having there spoken with the king;' which he confessed; and declared 'that he went to Paris 'upon a business that concerned himself' (which he named) 'and when he had dispatched it, and was to return for England, he desired the lord Gerard, his kinsman, to present him to the king, that he might kiss his hand; which he did in a large room, where were many present; and that, when he asked his majesty, whether he would command him any service into England? his majesty bid him to commend him to his friends there,

Somerset Fox was first called to the bar, and an Indictment of High-Treason read against him, for joining in a traitorous design to have murdered his highness the Lord Protector, and divers of his council, proclaimed

'and to charge them that they should be quiet, 'and not engage themselves in any plots; which 'must prove ruinous to them, and could do the 'king no good;' which was very true: for his majesty had observed so much of the temper of the people at his being at Worcester, and his concealment after, the fear they were under, and how fruitless any insurrection must be, that he endeavoured nothing more than to divert, and suppress all inclinations that way. However, this High Court of Justice received proof, that Mr. Gerard and Mr. Vowel had been present with some other gentlemen in a tavern, where discourse had been held, 'how easy a 'thing it was to kill the Protector, and at the 'same time to seize upon the Tower of London, and that, if at the same time the king 'were proclaimed, the city of London would 'presently declare for his majesty, and no body 'would oppose him.'

"Upon this Evidence, these two gentlemen were condemned to be hanged; and upon the 10th of July, about two months after they had been in prison, a gallows was erected at Charing-Cross; whither Mr. Vowel was brought: who was a person utterly unknown to the king and to any person entrusted by him, but very worthy to have his name, and memory, preserved in the list of those who shewed most magnanimity and courage in sacrificing their lives for the crown. He expressed a marvellous contempt of death; 'which,' he said, 'he suffered without having 'committed any fault.' He professed his duty to the king, and his reverence for the Church; and earnestly and pathetically advised the people to return to their fidelity to both; 'which,' he told them 'they would at last be compelled 'to do after all their sufferings.' He addressed himself most to the soldiers; told them how 'unworthily they prostituted themselves to 'serve the ambition of an unworthy tyrant;' and conjured them 'to forsake him, and to serve 'the king; which, he was sure, they would at 'last do.' And so having devoutly recommended the king, and the kingdom, and himself, to God in very pious prayers, he ended his life with as much Christian resolution, as can be expected from the most composed conscience.

"The Protector was prevailed with to shew more respect to Mr. Gerard in causing him to be beheaded, who was brought the afternoon of the same day to a scaffold upon the Tower-Hill. But they were so ill pleased with the behaviour of him who suffered in the morning, that they would not permit the other to speak to the people, but pressed him to discover all the secrets of the plot and conspiracy. He told them, 'that if he had a hundred lives, 'he would lose them all to do the king any

Charles Stuart king, seized on the present guards and forces, involved the nation in a bloody war, &c.

Somerset Fox did ingenuously confess the charge against him upon the main to be true, and that he is guilty.

Then Mr. John Gerhard and Mr. Peter Vowell were brought to the bar, and an indictment to the same purpose as that against Somerset Fox, read against them. They pleaded Not Guilty, and denied every thing.

Vowell said, that he required a jury of twelve of his equals, it being a law confirmed by Magna Charta; and according to the sixth Article of the Government by the Lord Protector also, that law being not repealed, and therefore that he might be tried by his peers.

The Lord President told him, That the members of the court were his peers, not his superiors but his equals, and that they were present near twice twelve, as he saw: and that they are to proceed by the power of an Ordinance before them.

It was also told him by serjeant Glyn, that he had owned the jurisdiction of the court in pleading Not Guilty.

Vowell said he was a man ignorant in the law, and desired advantage might not be taken of his weakness.

The Attorney-General (Prideaux) said, none desired to take any advantage of any thing he wished they had not brought themselves into these troubles; that they were there in the name of the Lord Protector of the Commonwealth of England to accuse the prisoners at the bar, and to bring in their Proof, and the

‘ service and was now willing to die upon that suspicion; but that he was very innocent of what was charged against him; that he had not entered into, or consented to any plot or conspiracy, nor given any countenance to any discourse to that purpose;’ and offered again to speak to the people, and to magnify the king: upon which they would not suffer him to proceed; and thereupon, with great and undaunted courage, he laid down his head upon the block.”

Hume thus expresses himself concerning this transaction:

“ Another act of severity, but necessary in his situation, was, at the very same time, exercised by the Protector, in the capital punishment of Gerard and Vowel, two royalists, who were accused of Conspiracy against his life. He had erected a High Court of Justice for their trial; an infringement of the ancient laws, which at this time was become familiar, but one to which no custom or precedent could reconcile the nation: Juries were found altogether unmanageable. The restless Liburnie, for new offences, had been brought to a new trial, and had been acquitted with new triumph and exultation. If no other method of conviction had been devised during this illegal and unpopular government, all its enemies were assured of entire impunity.”

prisoners were to defend themselves as well as they could; and when both sides were heard, it was to be left to the Court to determine, and to judge between them.

And it was declared that the Plot was to this effect: That the plot was, to seize on the Lord Protector and murder him, and some of the council and others, and proclaim and bring in Charles Stuart, son of the late king, to be king, which bloody design was to be effected thus: That the first hatching of the plot was in England by Mr. Hinshaw, who was one of the chief plotters, and others; Mr. Hinshaw went over from England to France to acquaint Charles Stuart (whom they called their king) with the design, and Mr. John Gerhard about that time went over to France also, who had told Mr. Hinshaw that he would do nothing in it until he had first had approbation from Charles Stuart. Mr. Wiseman was also then in France with them.

Address was made to Prince Rupert, and the design made known to him, desiring him to communicate it to (him they called) the king, who accordingly did, and brought Mr. Hinshaw to him; but Charles Stuart at the first delivered his judgment in the thing, that he was at present unsatisfied at that time to go on in that design for three reasons. 1. Because it would be dishonourable to him in the esteem of other princes, in case such a thing should be known, and should not be effected, to come in in such a way. 2. Because it did not seem to him to be feasible, but unlikely to be effected. 3. Because it was not at that time reasonable. But prince Rupert afterwards did much encourage and persuade, That the design might be carried on, and promised all assistance.

Mr. Hinshaw and Mr. Wiseman returned into England, Mr. Gerhard stayed there a while longer, but some weeks after came back also; Mr. Hinshaw declared to his confederates here in England what overtures had been with Charles Stuart, and that prince Rupert had engaged to send ten thousand Scots, English and French, and the duke of York to come with them to land in Sussex, and other places, and that there would be forces enough ready to assist and join with them.

Mr. Hudson the minister was thought on, to have letters of credence from Charles Stuart, who sent a letter to him; and that which he desired in case the plot had taken, was to be made the Master of Sutton's Hospital, which Mr. Hinshaw promised him.

One Master Philips, also, and others, were treated with about it, and master Gerhard returning from France, the Plot was resolved to be carried on, which was to be effected thus: 1. They were to seize on the Lord Protector, and murder him; and to do this work, they should take the opportunity of his going to Hampton-Court, which he used to do every Saturday with a small number slenderly armed; and those that were to do this were master Hinshaw and Mr. John Gerhard, with 30 horse, Mr. John Gerhard to bring 25 horse, and Mr.

Hinshaw five, which each of them was to engage. Mr. Gerhard was something cautious, not to discover who they were he engaged, before an oath of secrecy was given, but 25 he had undertaken for. Mr. Hinshaw's five were himself, Mr. Tuedore the apothecary, Mr. Wiseman, col. Aldridge, and another, and then to seize on the Tower of London, and to go on with their work.

2. If that failed, to seize on all the guards about Westminster, which they thought 2500 sufficient to do, and carry on their work here about London; and for that purpose Mr. Hinshaw, Mr. Gerhard and others viewed the Meuse, and the rest, and was heard, to say, what a pity it was that so slender guards should not be seized on! And that when the soldiers were at nine-pins in the Meuse, it was but shooting off a pistol, and presently to fall on.

3. The last way to have it effected to be thus: That when the foot regiments that are for the guards about London were mustering in Tothil-fields, as they used several times to do, to come into Tothil-fields and meet them there as of their own party, and when they have laid down their arms to seize upon them, and have others to be ready at the same time every where to perfect the work. And for this purpose, if they acted this way, Col. Finch with a party of 200 was to fall into London, and do the work in the City. Major John Gerhard to fall on Whitehall, Col. Hinshaw to fall on the Meuse. Col. Daniel with 200 to fall on St. James's. Another to fall into Southwark. And one Billingsly, a butcher at Smithfield Bars, with a party to fall upon Islington; and it was pressed that the opportunity might not be neglected.

And that the work might be the more feasible, they considered how as many of the soldiery as might be, might be engaged in the business. And the Papists (who had a great hand in the design) gave information of two soldiers of the army, that used sometimes to come and hear mass; and these two they sent a papist woman to, who engaged them, and their direction was, to give intelligence at Mr. Hudson's house, where Mr. Hinshaw and others of them frequented.

Master Vowell was cautious, being a solid man, for his work was not to bear arms, but as a privy-counsellor to them, and he was to engage Mr. Billingsly the butcher with a party to seize the Lord Protector's house at Islington, and him Mr. Vowell recommended to be a very fit man for that work. And they had this art, to endeavour to make the Lord Protector odious to the people, in turning the design upon him by a Libel, which was scattered up and down London, that his highness and the army had a design to massacre all but their friends in all parts of England; and this libel was written by Mr. Feenshaw, which was got printed by one in Newgate-market, and Mr. Vowell had one of them.

When the design was discovered, and Mr. Gerhard and some others apprehended, Mr.

Vowell being at Mr. Hudson's house, it was said by him, That the design might still go on, though some were discovered; Mr. Hinshaw and Mr. Wiseman came to him to Islington to his house, from whence they went to drink their morning's draught. Mr. Vowell said, there were enough to do the work still; Mr. Wiseman said, There were many horse to fall on; Mr. Vowell said, It might be easily done.

One Wharton in Black-frairs was to proclaim Charles Stuart king, and col. Finch was to seize on the Lord Mayor, and make him to proclaim him; Somerset Fox and others were to raise Apprentices to join in the design; but the Lord Protector going by water disappointed them.

Vowell then said to the Court, That they were not his peers because they were his judges, and therefore desired a jury of twelve of his equals.

Prideaux answered, that so a jury are the judges, though they be the Prisoners peers.

The Witnesses against the Prisoners at the Bar were called for.

John Wiseman was sworn, and being required to give evidence what he had to say touching the prisoners at the bar, avouched the charge against them, and said, That he was with Mr. Hinshaw in France, who did communicate by prince Rupert to Charles Stuart the design, as is before expressed. That he saw Mr. John Gerhard oftentimes with Mr. Hinshaw while he was in France, and that he told him in England, That there was a Plot to fall on the Lord Protector, and to bring in Charles Stuart to be king, and to the rest of that design as is before expressed. And about three weeks after he met Mr. Hinshaw and Mr. John Gerhard, and they went to James's, and the Meuse, Whitehall, and other places. That Mr. John Gerhard told one Mr. Minors of the business, and how they were to fall on my Lord Protector, and so as before expressed.

Then Mr. Gerhard interrupted him, saying, 'How should this be done with a company of geese?'

To whom Mr. Prideaux answered, 'That he knew best how it should be done, and wished he had never known it, nor gone about it.'

Wiseman went on in his evidence, and said, That Mr. John Gerhard being at Mr. Hudson's house, did there speak about the plot to fall on the Lord Protector, &c. That he had a dispute with Mr. Hinshaw (whom the said Wiseman call'd brother by some relation), That such a time, and so and so, would be seasonable (mentioning some particulars): That another day he heard Mr. John Gerhard say, That he was to command the party, and had a pistol that would discharge three several times, Mr. Hinshaw and several other persons being then by; and that he doubted not but it would be seasonable. That there were to be about thirty persons to fall on the Lord Protector; that his brother Hinshaw said he was to bring five, and Mr. Gerhard 25 to do the work, and named the five aforesaid that his



brother Hinshaw was to bring; and that his brother Hinshaw told him that Mr. John Gerhard was to surprize the Lord Protector's person.—And when the Plot was discovered, he heard his brother Hinshaw say, That they that were taken were all of Gerhard's party, and none of his, and that there was a Libel printed to turn the Plot on the Lord Protector, as is before expressed; and that his brother Hinshaw and Mr. Vowell had some of the Papers: That on Wednesday after it was discovered he was at Mr. Vowell's house at Islington, and his brother Hinshaw was there, and they went to the King's-Head to drink; and there his brother Hinshaw said, that the business might go on for all it was discovered, many regiments in several parts being ready to rise, enough to carry on the work.

Mr. John Gerhard and Mr. Peter Vowell, the prisoners at the bar, still denied all, and said it was not true what he said.

Mr. *Edward Hudson*, a Minister that was blind, was sworn, who said that Mr. Hinshaw desired him to write two or three words to the Scotch king, and that Mr. Hinshaw related all the business to him of the design, and the three objections by Charles Stuart, and prince Rupert's Answer afterwards, and the three ways to effect it; very much agreeing with the particulars aforementioned.—When he came to particulars touching the prisoners at the bar, he said that Mr. Vowell was his intimate friend, one that he had been much beholden to, and might have perished had not he relieved him. That Mr. Hinshaw sought to engage Mr. Vowell, but he answered that 'he thought himself to be unfit;' That he said 'he did not relish it.' What Mr. Hinshaw and he did agree, he knows not. What he heard was from Mr. Hinshaw, That he did meet accidentally, that he did suspect Mr. Vowell to act, but was not sure of it; that he did suppose they had concluded, but was not sure of any thing; that Mr. Vowell said he was himself unfit to engage, but he would engage a friend if he could; that Mr. Vowell said there was a great many horses at Islington, which might be surprized, that he would try what he could do; but whether he did any thing or not, he knows not.

Mr. Hudson denied some things he confessed upon oath before col. Goff, Justice of the Peace.

Col. *Goff* was sworn. He testified that the Examination (which was produced in the Court) was all written from Mr. Hudson's own mouth, and after it was written, it was read to him, to the end that if there had been any mistake it might be altered, and was all by him owned upon his oath, that it was freely testified, and nothing in it extorted from him.

Mr. *Hudson* said that he was pressed, and that he then said these words: 'Do not thus afflict an old distressed man, that hath nothing but afflictions upon him.'

To which col. *Goff* answered, That at first Mr. Hudson denied all, and would confess no-

thing until he heard the whole business confessed by another, and that all that was pressed to him was to discharge his conscience in speaking the truth; and that when he heard another to confess the Plot so fully, he desired to be heard again, and then did freely confess, according to the Examination.

In the said Examination Mr. Hudson declareth the whole Plot, and the proceedings in France, Charles Stuart's objections, prince Rupert's encouragement, the three ways to effect it, and all the particulars of the design as aforesaid, &c. And how Mr. Vowell spake with Mr. Hinshaw, Mr. Wiseman, and the two soldiers; that Mr. Hinshaw said there were many cavaliers in town in the Plot, but would never speak to two together; that some relished it well, others doubted. And some agreed to seize on the Lord Protector and the guards, go with drums and colours to Whitehall, and the rest of the particulars, for bringing in Charles Stuart, &c.—In the said Examination he also said, that Mr. Hinshaw said that they would set up major-general Brown to be at the head of them, by a letter which they hoped to get from Charles Stuart, and believed that he would accept of it, he being a friend to the king, as they called him. That it was propounded to Mr. Vowell, who did consent to do something in it, and did afterwards meet some six times at Mr. Hudson's house. That Mr. Vowell engaged Billingsly the butcher aforesaid to be a considerable man, discoursed with him of the number of horse, and Billingsly said to him that the horses at grass might be easily seized. That Hinshaw told him and Vowell, after Gerhard was taken, that none of his party was taken, and that the Plot might go on, that the French, English, and Irish from prince Rupert were to land at Rye, and other places in Sussex.

The Lord President asked Mr. Hudson whether he did own it; to whom he answered, That they were together, and such and such things were spoken; but how far Mr. Vowell consented, he knows not.

Then Mr. *Robert Dale* was sworn, who declared against Mr. Vowell the prisoner at the bar, That Mr. Vowell came to his house, and asked him what arms he had; he told him two pistols; he said he would buy them of him; he asked for what use; he said that he would tell him hereafter. That he came with Mr. Hinshaw and Mr. Wiseman several times to his house, who did declare that they had a design to fall on the Lord Protector (and so in all particulars agreeing with the rest touching the whole business of the design how it should have been done, as hath been before exprest.) And that sir Gilbert Pickering, Mr. Strickland, and two or three more of the Council were named that should be cut off.—That they invited him to assist them, and would have engaged him to fall on in the seizing of them at Islington, and they said there was one to head them, which they should know afterwards, and he said that Mr. Vowell heard these things. And that at

another time Mr. Hinshaw, Mr. Wiseman, and Mr. Plunket met with Mr. Vowell.

And his Examination was read: That Mr. Vowell asked him whether he had any arms to accommodate friends, he said two pistols (and the rest of the discourse as now he had spoken before the Court); only the Examination mentioned a third person of the council, viz. major general Lambert also to be cut off. That they were provided of an head, and bid him therefore be sure to rise when he had notice. Then Mr. Hinshaw seeing two men passing along by where he was, supposing them to be soldiers, said they should be killed, and he said that Plunket would give notice when they should be ready upon the design to fall on; and that he was engaged to get as many as he could to assist in the work: That Vowell brought Hinshaw to his house.

*John Hipwell*, one of the two soldiers in the Plot, being sworn, said, That a Papist woman brought him to Mr. Hudson's house where he met with them, and one told him, That he had something to discover to him, if he could join in it. That he was examined how strong the guards were, and that regiment of which he was, and said the regiment were 1200: He was asked what ammunition, and other such-like questions, to all which he gave answer. After some discourse he told him, That it was to fall on the Lord Protector, and on the guards, &c. and so told him the whole design (which he related to the same purpose as those before). That he was bid to enquire what cavaliers were in the regiment, and among the soldiery, and drunk with them, and do what he could to divide the soldiery, and to make what party he could for this work, and that when the time should be for action, the word should be 'Fall on.' The next morning hearing some were taken prisoners, there was much sorrow.

Then col. *Aldridge* was sworn, who said, That Mr. Hinshaw revealed there was a design to have fallen on the Lord Protector, and brought in Charles Stuart to be king, and related the particulars much to the purpose as is before expressed, and that Hinshaw asked him, if he would be one; that he made some queries about it; but Mr. Hinshaw told him, They had great hopes of accomplishing it, and that there was an officer of their own in the Tower that should free the prisoners, and put swords in their hands, and that all should be done upon an instant, and that then they should have money enough.

Then Mr. John Gerhard was caused to withdraw awhile.

*Mr. Charles Gerhard* was next called for, to see what he could say touching the plot, who declared, That Mr. Hinshaw had been in France with Charles Stuart, and his brother John also, and Mr. Wiseman had been there; and made a narrative of all the proceedings there, agreeing with the rest before; and spake also of several meetings at Ludgate-hill and

Covent-garden; how he met col. Finch at the piazza, who told him of the design to kill the Lord Protector, to seize on the guards, the Lord Mayor, &c. proclaim Charles Stuart king; and the rest of that story of their design, in which he agreed with the former. And that he declared to him, That they were listing apace, and they had many joined hereabouts: that col. Deane had listed all that day: that he himself had listed some: that col. Finch had a party to join with him in the city. That another time he had further discourse again with him about it; that they were to meet the next day, and then it was also said, That Finch was to command a party, and that his brother John Gerhard also was to command a party, and that his brother John was then by, and heard this discourse; and that it was said there was ready about London to seize on several parts, in all, about 2 or 3,000: that col. Finch was to seize on the Lord Mayor, col. Dean on James's, col. Haines on col. Ingol-bie in Southwark (and so named other particulars like what is mentioned before); told him also the management of the design in France (agreeing with what is mentioned before), and said, he had a commission from the king (as he called him). And he spake also of their meeting at the Bell Savage at Ludgate-hill, where mention was made of his brother John Gerhard; and that Somerset Fox was there, and engaged in the design, and his was to get in all the Apprentices he could to join in it. That at another time Hinshaw said, They had listed two or three thousand.

Then Mr. John Gerhard was called to the bar again, where he appeared with the other two.

*Mr. Charles Gerhard* was then sworn, and upon his oath gave in evidence, after his brother was brought to the bar, That the design was to fall on the Lord Protector, &c. (he gave a short narrative as before) and further said, that his brother John Gerhard had been in France.

*John Gerhard* prisoner at the bar said, He confessed it, that he was in France when they were there, and was sometimes in their company, but denied that he knew any thing of any plot.

*Mr. Charles Gerhard* being desired to go on further, said, That Mr. Hinshaw was several times at his lodgings, near Essex house, and his brother with him, and talked with him of the design, which his brother scrupled; but he told him, that if it could be accomplished, the king (as he called him) would like well of it. That his brother met Mr. Hinshaw at Covent-garden, at Mr. Jones's house in Rose-street, who had pen and ink before him, and talked of the numbers and other particulars, his brother John then in the room (and he named the particulars as before). But his brother did not relish it, and was pressed by them, nor did he know that he consented to act.

*Mr. Prideaux* told Mr. Charles Gerhard, That he did well to be as sparing as he could

against a brother, only be careful to speak the truth, though with the fairest interpretation, because conscience is nearer than a brother.

The *Lord President* also said, That he was not to look upon either the greatness of men, or the relation of a brother in this thing, but to look upon his conscience, and to look up to his God.

*John Man* was sworn, who declared the design in general, (as the rest all agreeing) and that Mr. John Gerhard and others had consulted about it.

That being asked if he would engage in it, he answered, Yes: that afterwards he went to the *Bell Savage*, but when he came there, there were *Somerset Fox* and others, and they said he could not have admission, for several were apprehended about it, and they knew not what to do.

*William Dod* was sworn, who gave in evidence, That on Thursday morning in Whitsun-week, *Somerset Fox* told him, that there was a design (as aforesaid, giving him an account of the whole), but he told him that it was to be kept secret. And that they were to meet about 2 o'clock in the morning about it. That at the *Bell Savage* he met with *Somerset Fox*, and his cousin *Fox* the next day again, and had the like discourse.

*Francis Fox* being sworn, gave in the like evidence against his cousin *Somerset Fox*, and that he was invited to join with them, but could not tell what to do.

*John Wharton* was sworn, who said, he keeps a victualling house in *Black-friars*, and that a gentleman, a stranger, came to him, and asked him, If he would serve the king, and tell in discourse about his calling; that he told him he had married a poor widow: and that the gentleman told him, that if the design went on, he might have money enough, and said that he would find him better employment. The gentleman's name, he said, was *Hinslaw*, as he heard afterward. And that he told him, He would not be long before he came again. He said that he did believe that they had designed to seize on the *Lord Protector*, and all the *Horse Guards*. But for his part, he was, when they should give him notice of it, only to proclaim the king; that was all that he was to do.

*Mr. Barnes* was sworn, who spake of the Design in general, much after the same manner as those before.

*Mr. Minors* was the last witness sworn, who gave evidence, that major *Hinslaw* told him of the design near *Covent-garden*, and one *Mr. Harrison*, *Tuedor*, and others, were mentioned. That he asked him if he would join in it. That afterward he met with *Hinslaw* in the *Palace-yard* at *Westminster*, who told him of the design as before. And that major *John Gerhard* would command a party, and that the business

was then in good forwardness, but major *John Gerhard* thought it could not yet be accomplished. And that when *Mr. Hinslaw* heard *Mr. John Gerhard* was taken, he said that he might thank himself; for had not he delayed it, the business might have been done two days before.

The Prisoners at the bar were then asked what they had to say for themselves.

*Mr. John Gerhard* said he was falsely accused, and that the Witnesses did not speak the truth, and denied that he had any thing to do in the plot, or knew of it.

*Mr. Vowell* did require of the Court to be allowed pen, ink and paper, the copy of his Charge, and counsel to advise him what defence to make for himself. And he pleaded *Magna Charta* again, as before, and the sixth Article of the Government of the *Lord Protector*.

*Sergeant Glyn* declared, that an ordinance being declared law until the parliament shall repeal it, is to give the same authority to it, which is to an Act of Parliament, every Act being a law no longer. That the laws of old of Treason against the king are of force (were this new Ordinance not in being): For it means the *Supreme Governor*\*; though it names only a King, it hath been made use of for Treason against a Queen, and so is to be touching a *Lord Protector*, or any other *Supreme Governor*.

*Mr. Ellis*, Counsel of the Commonwealth, produced in Court the Government of the *Lord Protector*, in which that very Article, in the conclusion of it, hath a Proviso to the 30th Article.

The *Attorney General* (*Prideaux*) declared, that the Charge having been so fully proved against them, yet they could not but take notice of the ingenuous confession of *Somerset Fox*; but were sorry to see such obstinacy in the other two, after such a barbarous and bloody design; that they should shew no signs of repentance: And therefore in behalf of the Commonwealth prayed for Justice from the Court against them.

The Court adjourned into the Painted Chamber, and ordered that they should have pen, ink and paper, and any friend to come to them that they should desire in the presence of the lieutenant of the Tower.

The Court adjourned until Thursday next in the afternoon: When *Mr. Gerhard*, *Vowell*, and *Fox* were again brought before the Court, and were demanded what they had more to say for themselves, *Gerhard* and *Vowell* denied the fact, notwithstanding what had been proved against them; after which the *Lord President Lisle* made a short speech to convince them of the desperate wickedness of their design, and how fully the Charge had been proved, and

\* See *Luders's "Considerations on the Law of High Treason in the Case of Levying War,"* 71, 72.

what punishments the law hath provided in such cases; after which the Sentence of the Court was read severally to all three to this effect: That upon mature consideration of the Treasons and Murders plotted and contrived by them against his highness the Lord Protector, and the Commonwealth, and raising a bloody war in the same, the Court did adjudge them to be hanged by the neck, until they be dead.

Mr. Gerhard desired the execution might be altered, and that he might be beheaded, or shot to death, and presented a Petition to the Lord Protector for that purpose.

The Protector was pleased to reprove Somerset Fox, because of his ingenuous Confession, but the other two were executed the Monday following, July 10. Vowell was executed in the morning upon a gallows erected at Charing Cross; he spake little of the crime for which he suffered; but his main discourse was to proclaim his zeal for the Old Way of Religion, and to the cause of the late king and his family; after half an hour's hanging he was cut down, and conveyed away in a coach.

About four in the afternoon of the same day, Mr. John Gerhard was brought to the scaffold on Tower Hill; his behaviour was sprightly, the substance of his Discourse Cavalier-like, boasting himself of the profession of religion which was established by queen Elizabeth, king James, and king Charles, to which family he declared his affection. He acknowledged himself guilty of former sins, for which he had deserved death heretofore; but as touching the crime for which he was to die, he spent not many words, only he confessed, that he knew of the Plot. At length he submitted his neck to the executioner, who at one blow severed his head from his body.

A true and impartial RELATION of the DEATH (and dying Speech) of Mr. John Gerhard, who was beheaded on Tower-hill, July 10, 1654. [Published by his friends \*.]

It was thought needless by the friends of Mr. Gerhard, to declare any thing concerning his Sufferings to the world more than in their sighs, had not the sacrilegious malice of the last weekly pamphlet thrown some stains upon his name, and so incensed them to a vindication as pious as his death was. It is most certain, that there can no blots stick upon true honour, which such weak felons endeavour against it: These are cursed beasts, but their horns are short: sepulchral dogs, that scrape up graves, and violate the dead, and are fierce and ravenous; but yet dogs still. And all worthy people will call their railing, praise, and what they intend a barking infamy, the greatest merit. Yet because every understanding is not of the same brightness, and those putrid labels may, by ill chance, fall into some innocent hand hereafter (and yet sure such vermin should not be endured long), therefore let wise and good

men pardon him that hath undertaken this justice for that gentleman, and he pleased to read this sad Story, not for their satisfaction sake, but their sorrows: It may dry up a friendly tear, perhaps, and still a murmuring groan, to see the comely posture of his passion, how well all was carried by him, and how honourably; and the honest circumstances may not improbably take off from the sadness. Why should I grieve that death which had such a living glory in it; or dishonour that blood with feeble tears, which was shed so like the holy Martyrs? All that knew this person, cannot but witness his general resolution, and whether his great courage fell less than itself (as that viper hiss-eth), or did not rather rise greater now, when the christian was twisted with the gentleman, let this faithful Relation witness: in which, though all terms and syllables may not be exactly the same, yet if there be a material falsehood, or a wilful flattery, may his neck that wrote it feel a viler destiny than axes are, or halters. *Amicus Geraruis, sed magis Amica Veritas.*

From the first day of his Imprisonment he foresaw the heavy sentence hovering upon him, and therefore gave all diligence to secure himself against it; that however he underwent a temporal condemnation, he might escape an eternal. But after that sad doom was pronounced, then he bestirred himself again, and made double haste for Heaven: It was for his life, and therefore he would lose no minute, but the same night gave directions to a dear friend for a minister, whom he knew to have long honoured his family, to be brought to him early next morning; and it pleased Authority to gratify him in this great desire, so that an Order was sent freely for the quiet admission of any such person to him. With this spiritual friend he spent some hours every day in prayer, and other ghostly refreshments; which, God be praised, were not without sweet effect and impressions upon his soul. There were some other ministers, Mr. Bond and Mr. Caryl, of great observation for gravity and godliness in these times, who visited him, and who I am confident will put their seal to this truth with me, that they found him meek, humble, modest, penitent, comforted, and not far from the kingdom of God, if not already in it; but I have good hope he was in possession, and so had he, through grace. Upon the morning (which was the last he must see until that of the Resurrection) he submitted to some wholesome orders of the Church, and received her comforts by them. That done, he proceeded to, the highest enjoyment of grace that can be administered upon earth, the Holy Communion, whereof with his brother sir Gilbert Gerrard he was a partaker, with as much reverence, zeal, thankfulness, holy sorrows, and holy joys, as a devout soul could evidence: He wept as if he would have washed his Saviour's wounds, which his faith presented in his tears; and yet he said he was admirably ravished with all inward peace and

\* See Heath's Martyrs, p. 371.

comfort in his own conscience. This passed; he had now nothing to do but to die, which he expected that morning very speedily. But by the pleasure of Authority both the time and the place of his execution were altered; so that he was to wait a little longer until evening, for his release. Many friends and persons of honour came to take their last leave of him, who can gladly witness his undisturbedness, and civil cheerfulness to every one of them. His brother tarried continually with him, and they eat together; and though some eruptions of passion could not be restrained now and then, where nature was so much concerned, yet they were generally pleasant; and at last parted about half an hour before he was led forth to death, with as much calmness and placidness as it they had been to meet again anon safe and unhurt, as they had done formerly. So have I seen a windy and stormy day conclude in stillness and sun-shine, as if weary, and desiring to rest without any breath of trouble. The Minister only waited on him to the last; and about five o'clock enters the Lieutenant of the Tower, and the Sheriff of London; (two sure friends, that will not leave him, as long as he hath life remaining in him :) They told him a sorrowful message, That they were come to conduct him to his death's blow. He replied, They were very welcome; and received them so fearless and untroubled, that the Sheriff told the Minister, He was sorry to see him so unfit for that condition; but, under favour, he mistook his condition: That which he accounted fitness to die, our Pamphlet-monger would have called Flaggings and Cowardice. So hard a thing it is to satisfy all curiosities, even with our blood, and nothing more ingenious than to carry this bitter cup even, when so many misconstructions shake it. At his lodging, he desired the Sheriff that he would permit the Minister, and three others that were his friends and servants, to go upon the scaffold with him; which, as it was a reasonable wisdom in him to desire, so was it a fortunate kindness from them that granted it, else it may be their testimony might have been wanting to his injured reputation. He took leave particularly of the household, where he was a prisoner, and was so clearly collected in every thing he did, that he went out of his way into the kitchen, to bid his landlady farewell, giving thanks for her respects during his bonds, which he said he should die in to her. As he passed by the guards in the Tower, he gave them money twice, and told them, he should trouble them no longer, being on his remove to better guards. He walked along to the Scaffold on Tower-Hill, shewing a great deal both of humility and respect to the people, who generally lamented him, and prayed for him. As he went, he was bare-headed for the most part, carrying his hat in his hand, and sometimes resting it in a careless bravery on his left side. When he came to (or rather leaped upon) the scaffold, (for he was so far from flaggings when about to tread that tragical stage, that many

observed how sprightly he seemed to skip up the steps to it, as if he had gone to dance there, rather than to die) his grim Executioner presented himself to him, to whom, with a cheerful smile, he said, 'Welcome, honest friend;' and desiring to see his axe, he took it into his hands, and kissing it, with a pretty glance of his eye, which was a natural loveliness in him, towards the minister, he said, 'This will do the deed, I warrant it.' The scaffold was very much crowded with people, yet, as well as he could, he made some turns to and fro upon it, with a Paper, which he had taken out of his pocket, in his hand, wherein, it seems, he had prepared some heads for a Speech, which he intended to have delivered; but the Sheriff and Lieutenant told him, if he spoke any thing, it must be very brief, and that they must not suffer him to speak any thing that was seditious: 'Well, gentlemen,' says he, 'your will be done; but, God be praised, I never yet had to do with any thing that was seditious! I would fain have spoken something to clear myself to the world, according to the custom, if it might have been: But come, Sir,' (says he, turning to the minister,) 'let you and I speak to him that will give us leave;' and so kneeling down together in a corner of the stage, the minister prayed with him a short time; which done, they stood up again: Then turning himself to the people, and putting off his hat, he told them, That he was not permitted to speak a few words, according to his intention, yet he doubted not but what he would have said would come to their eyes, though it must not come to their ears; 'But this I desire all to take notice of,' (and this he spoke with a double vehemence,) 'that I die a faithful subject and servant to king Charles the Second, whom I pray God to bless, and restore to his rights; and had I ten thousand thousand lives, I would gladly lay them all down thus for his service.' Here he was interrupted, and the Sheriff wished him rather to confess what he knew concerning the horrid Plot he was condemned for; he answered, That he had confessed all that he knew concerning any Plot; that he thought they knew more of the Plot that condemned him, than he did, but he heartily forgave them. The Minister told him, it was well done to forgive and pardon those that persecute us, that was an act of true Christian love, but, as his case stood, love was not enough; he ought to deal in this business, upon which his life lay, with all candour and sincerity, not concealing any thing of that nature, as was charged against him, as far as he might glorify God, and serve the public good. Upon which, lifting up his eyes towards heaven, and laying his hand upon his breast, 'Oh! Sir,' says he, 'if there had been any such thing in this breast, would I not have revealed it before this time? I protest, in the sight of Almighty God, I know no more of any such design, but only what I have often acknowledged, that it was motioned to me by Henshaw, (who, I confidently believe, is in their hands.)

‘and debated twice or thrice, when I was with him; but I never entertained it at all, and at the last flatly disowned it, and told him, I would have nothing to do in it. He was many times pressing me to nominate what persons I knew I could bring, and to have their names; but let them shew any such thing, if they can, against me: But I am certain he is in their hands.’ Pausing here a little, and fetching a turn or two on the Scaffold, being very hot, as he had been all that morning, he called for some small-beer, which he had given order to be ready, and was brought thither in a stone bottle, of which he drank a little once or twice. Then the Minister went to him, and minded him, that something might be expected from him, as to his religion and disposition to die: To which, gathering up an extraordinary resolution in his face, he replied, ‘I die a Christian, a true Christian, according to that faith and religion, which was professed by the church of England, in the time of our late king, of blessed memory. And I praise God, I am so fitted and ready to die, that I am confident, by the merits of Christ Jesus, that my sins are pardoned, and my salvation is at hand.’ Then turning about, he called for his waistcoat and cap, and throwing off his doublet, put them on, whilst his servants helped to put up his hair. His waistcoat was not very clean, which he took notice of to his man: ‘But it is no great matter,’ said he, ‘if the heart be clean, all is well enough.’ Being thus prepared, he calls for the block, and viewing it, as with delight, laid himself down upon it, to see how it would fit, and was so far from sinking at the sight of it, that he almost played with it; and rising quickly, pulls a little Prayer-Book out of his pocket, which he gave to the Minister, willing him to find that particular prayer which was proper for that occasion; but the crowd being great, he could not quickly find it, so that he kneeled down with the book open awhile in his hand, as if he had read, but quickly shut it, and prayed with great expressions of fervency by himself. When he had done, the Lieutenant said something to him, as it seems, concerning his brother Charles, that had witnessed against him; I know not what the Lieutenant said, for he spake low, but Mr. Gerard spake aloud, and replied passionately, ‘Oh! Christ, Sir! I love my poor brother with all my heart! He is but a youth, and was terrified; I know how he was dealt with; tell him, I love him as well as ever I loved him in my life: And commend me to my brother sir Gilbert, whose release I beseech you, Sir, to assist; there being no more cause, that I know of, for his imprisonment, than only that he was found in the same bed with me, which, sure, is no capital crime.’ Having said this, he took his leave with him, and the Sheriff, and all he knew on the stage; and turning about once more to the people, desired them to pray for him; himself kneeling down with the minister, laid his head in his bosom, and they prayed together the last time. After this, he

bid them all farewell again, and besought them to remember they had a poor sovereign abroad, who deserved to be remembered. Then forgiving the Executioner, and saluting the Minister with his last embrace and kisses, he bowed himself to the stroke of death, with as much Christian meekness and noble courage mixed together, as I believe was ever seen in any that had bled upon that altar: And this all the people, that were spectators, did seem to understand and acknowledge, beholding his fatal blow with a universal sadness and silence; whereas, when the other gentleman fell quickly after, upon another score of blood and riot, they gave a great and general shout, as applauding the justice of the Portugal’s death\*; but pitying and bewailing the untimely fall of so brave and magnanimous a spirit, as did, through all the clouds of death, shine gloriously in this unfortunate gentleman.

#### *His Speech.*

“Gentlemen, As this kind of spectacle is no new entertainment to your eyes, for you have had a late glut of such objects, so is it no strange thing to me to be made such a spectacle; for I have been bred upon the theatre of death, and have learned that part so well, though, I confess, a very hard one, as to perform it pretty handsomely, both as becomes a gentleman and a Christian. Only I must desire you to expect no fine Prologue, or Speech, from me; I never studied to make orations: A very unfit man to lay plots against a state, who am scarce able to lay a few lines of plain English to other, as I ought; but though I cannot speak happily, I doubt not but I shall die happily.

“I confess myself a great sinner; Who is innocent? God be merciful to me, a miserable sinner. I adore the justice of God in all this that is come upon me; I have deserved to die long since, and blessed be God, who hath given me such time to prepare; but for this crime I stand condemned for to-day, I do protest mine own innocency, as to any consent or engagement to act in it. I hope you will believe me, when you consider upon what slender Proofs and Testimonies I suffer; none of them legal, or positive, but circumstantial.

“For my brother Charles, alas, poor youth! how he was wrought upon! But I desire all my friends to think honourably of him. For my brother sir Gilbert, this imagination of a Plot is said to have been hatched in France, but I fear the nest was at Whitehall. As for the king, so far from concurring to such a deed, that I am only unsatisfied in this, whether I shall die right in his favour, because suspected of any thing so unworthy of him. I fear he lost his

\* Don Pantaleon Sa, brother to the Portugal Ambassador, who was convicted July 6th, with others, of Murder, in the New Exchange, by a Jury of six aliens and six denizens, was brought to the Scaffold, and executed with Mr. Gerard. See his Case, *ante*, p. 462.

kingdom by such practices ; but whether he would recover them so, is a question : God hath better ways, when it shall be good in his sight to plead his cause.

" I was lately in France, but on mine own score ; for I have commanded there and probably might again.

" For my past life, it hath been but a troublesome one, but now I hope I shall rest ! Since I was any thing, I have served the king as I was bound ; and I wish all that did so had done it as faithfully : he was condemned for a tyrant, but God——

" For my religion, though a soldier, I am able to profess I am a Christian soldier, a true son of the church of England, as constituted under queen Elizabeth, king James, and king Charles, of blessed memory : her doctrine and government I embrace, her truth and peace I pray God to restore. I humbly give thanks to God Almighty, for providing me the comfort of a minister, on whose fidelity I might repose my soul. And I pray God to bless the poor faithful ministers of this church, and give you hearts to esteem them ? the want whereof is no small cause of our misery. My days have been few and evil, yet, God be blessed, in all the vanities and folly of youth, I have been far from Atheism, or contempt of God's worship ; I had always awful impressions of God's honour and service, which is now my comfort.

" And now, dear countrymen, fare you well ! I pray God bless you all, and this whole nation. Alas, poor England ! when will these black days be over ? When will there be blood enough ? I wish mine may fill up the measure. —I forgive all. Once more fare you well ! Commend me to all my friends, pray for me. I pray God make you as faithful and loyal as I have lived, and as happy as I shall be by-and-bye when I am dead. Come Lord Jesus ! come quickly ! Father of mercies, have mercy on me ! Saviour of the world save my soul ! O Lamb of God, that takes away the sins of the world, hear my prayers ! Into thy hands, O Lord, I commend my spirit ! Lord Jesus ! receive my soul !"

The DYING SPEECH of Mr. Peter Vowell, executed July 10, 1654. [From the MS of Dr. Richard Drake, late Chancellor of Sarum.]

" Gentlemen ; At this earthly bar, from them that pretend to have a great measure of sanctity, I had hard measure : But to that bar I am now going, the Bar of Heaven, where I shall have justice ; yea, one day justice against them, except they water their beds and couches with tears of repentance.

" The Court gave severe and rash Judgment on my body ; and sent a pitiful fellow (but pitiless) that gave as rash a judgment on my soul : But that precious jewel none of them could touch to hurt. The souls under the altar cried for vengeance, loud, long ago : How many more of late years have been added to them to

help the cry ! The cry is loud of those lately, whose blood hath been unlawfully spilt. But vengeance is God's, and I will leave it to him. The Court at my Trial said I was confident ; and held it as a fault : He also whom they sent to the Tower (I know not if, to intrap me) under pretence to comfort my soul, told me also I was confident. I say the same ; and the same confidence bring with me now ; and by God's assistance, I hope, shall carry it out of this world with my innocence.

" Gentlemen Soldiers, Amongst the ancient and most savage sort of Heathens they had a law, once every three, six, or twelve months, to offer up a sacrifice of human blood to their God ; and that their God was a Devil. Amongst us, whether Heathen or not you best know, of late years, we have had a fatal custom, once in three, six, or twelve months, to make not only a sacrifice, but many sacrifices of human Christian blood : Our scaffolds have reeked and smoked with the choicest sort of blood ; but unto what God, do you judge. What God is he that delights in the blood of a man ? Baal, the God of Ekron ; Beelzebub, the God of Flies.

" Amongst the primitive Christians, that lived nearest the time of our Saviour Christ, the greatest tyrants and persecutors of the Christians lived. The persecution was great ; and yet the courage of those persecuted Christians was so great, that it excelled the fury of the persecutors ; that they came in faster to be killed, than they could kill : they offered their bodies and throats so thick unto the slaughter, that the hands of the tyrants were weary with killing. And yet *Sanguis Martyrum* was *Semen Ecclesie* : And many heathens came in with the Christians, and died Christians, and died with them ; the Christians still increased the more.

" Of late years there hath been a great persecution in this nation ; and yet the sufferers have been so many, and presented themselves so thick, in the vindication of their king, country, and laws, that they startled the very enemy himself ; their constancy so great, that the eyes of their judges drop tears ; whether real or true, let the Judge of Judges judge : They still stand amazed at their constancy ; though they exceed the old heathens, are not weary of killing.

" Oh Soldiers ! how many of you have been brought up and led on by blind principles, wronged in your education, or seduced by your indiscreet, heedless, and heady teachers ? How many of you, young, have for some small discontent departed from your loving masters, dear friends, or tender parents, and fled into the army ? How many of you driven by tyrannous oppression, poverty, or cruelty, have left your dear wives and children ? And some for novelty or wantonness adhered to this employment, not considering the great danger of spilling innocent blood. How many of you have drawn your swords, you do not know for what ? How many of you keep drawn your swords, you do not know for what ?

"You have put to death a pious and just king; and in his stead have reared up even another Jeroboam, that makes Israel to sin: What his goodness is, you best know.

"You have put down a good old law, and raised up another of your own to judge the people by. For my calling for the benefit of the former, and for the equity even of your own law, I am in part condemned here to die. Be you judge of the proceedings.

"How many of you have had a hand in putting down the ancient true Church, and raised up in your own imaginations a new one; But, alas! you know not what you do: If you did, you would grieve to see what a glorious church you have ruined; you would never have pulled up the hedges, and broken down the fences, that the wild beasts of the forests should come in; that the little foxes should devour, and the wild boar root out so stately a vine.

"When the Jews were led into captivity, their goodly and magnificent temple was burnt: But in process of time they obtained favour amongst the heathen kings they dwelt amongst, and had liberty wherewith to rebuild. Rebuild they did, and finished a second temple; at which sight all the young men rejoiced, to see so gallant a temple; but the old men wept, to see how far different and short the second temple was from the glory of the first. So you, young men, rejoice at your imaginary church; but the old men, methinks I see some weep. Oh! weep not for me! weep for your country! weep to see religion, liberty, and laws taken from you! weep to see so many good men snatched away, but indeed from the misery to come! and weep for what miseries your unhappy selves will suffer!

"Soldiers, However you flourish for a time,

and perhaps many of you may rejoice at our deaths, believe it, as Samson pulled the house of the Philistines down, when he fell; so shall we give you and your cause a greater blow by our deaths, than living we possibly could have done. You may for a time flourish; but remember what our Saviour said: 'All you that make use of the sword, shall perish by the sword.' You shall be cut down like the grass, and wither away like the green herbs.

"But do you behold yonder glorious place? Do you behold the spangled heavens, where the holy Angels dwell, where God himself is surrounded with thrones, principalities, powers, and the celestial spirits of just men? When the trumpet shall blow, when the dead shall rise at the dreadful day of judgment, how will you answer all your rapes and murders? Do you think that your hands, which have been bathed in the blood of your king, the blood of so many of your eminent countrymen, so unjustly: that have been bathed in the blood of many of your friends, your kindred, perhaps your parents, can ever reach yonder glorious place, without repentance? Oh! no. Repent now, therefore, it is not too late; Shake off your bloody Protector; rescue your antient laws; and call in your royal young Prince, whom you have long enough wronged. Make your addresses to the great Protector of heaven and earth; and desire him, as I now do for myself, for a pardon, for a pardon for all your former and present transgressions.

"I die an obedient son of the church of England, and with a dutiful heart to the king; and desire that none present that loves them would be disheartened by my death, but continue faithful to the end. And so farewell, I forgive all the world."

196. Proceedings of the Commissioners, appointed by Oliver Cromwell, for ejecting Scandalous and Insufficient Ministers, against JOHN PORDAGE, of Bradfield, in the County of Berks: 6 CHARLES II. A. D. 1654. [Wrote by Himself.]

I WAS first warned by this subsequent summons, to appear before the Commissioners:

*Monday, September 18, 1654.*

*Berks, ss.* By the Commissioners appointed by an Ordinance\* of his highness the Lord Protector and his Council, for ejecting of Scandalous Ministers.

"Whereas several scandalous Articles have been exhibited against Dr. J. Pordage of Brad-

field, in the said county of Berks; which said Articles lying now before the said Commissioners, it is thereupon ordered by the said Commissioners, that the said Dr. Pordage do make his personal Appearance before the said Commissioners, on Thursday the 5th of October next, at the Bear in Speenhamland, by Newbury, at 9 o'clock in the morning, to answer the said Articles exhibited against him: Whereof he is not to fail. Given under our hands

\* Collier, whose account of ecclesiastical affairs during the period, between the death of Charles I. and the restoration of his son, is extremely brief, says of this Ordinance merely, (vol. 2. p. 867, of his Ecclesiastical History) "Their next Statute provides for removing scandalous and insufficient Ministers and

School Masters; that is, those who had continued firm to the church and crown. For this purpose, a considerable number of secular Commissioners are nominated for each county. There is likewise a list of ministers throughout the same divisions of the kingdom, appointed for this purpose. By the Act the



and seals in Reading, the day and year above said.

C. Whichcot,  
S. Wightwick,  
R. Fincher,

W. Strowde,  
W. Narkine,  
W. Cooke."

Accordingly at the time prefixed I appeared, about 9 o'clock in the morning, in the place above expressed: where I waited till betwixt 3 and 4 o'clock before I was called in. Then came the door-keeper to tell me that the Commissioners called for me.

I presently obeyed, and followed their servant, with two friends that accompanied me. Then the door-keeper commanded my two friends to go forth of the room. I told him they were to be there. He replied, That he was ordered by the Commissioners to let none in but myself; and therefore they should be put out: And so began in an uncivil manner, by violence, to thrust them forth. Whereupon I applied myself to the Commissioners, telling them these two were my friends; and that I brought them as eye-witnesses of the proceedings; and that it was no reason that I should be alone. To which it was answered, They must depart, it being resolved upon by them to have none but myself there present. Then the door-keeper began with violence to pull them forth, crying out, Do you not hear the sense of the Commissioners? I turning towards them again, said, I desire none present but these my two friends. It was replied, it should not be so. Upon this I was necessitated to ask them, against my will, what they were, whether a public Court of Justice, yea or no? For if they were, I demanded the liberty of a subject, that their doors might be opened, for all to come in that would; that so their proceedings might be open. Moreover, I shewed how this was the custom of all Committees above, and of all such Courts of Judicature. Whereupon the doors were opened, and the people came in; Mr. Wightwick openly availing that I should fare the worse for it. Thus was I necessitated to contend for this just and reasonable privilege; for which my cause was unjustly threatened.

The Commissioners then sitting were these, with one or two more; Mr. Pettipiece chairman, Mr. Samuel Wightwick, Mr. Samuel Dauch, major Fincher, major Allin, Mr. Cox, Mr. Strowde, Mr. Angell Bell. The ministers

lay-Commissioners could determine nothing without the approbation of the Ministers, who were joined in Commission with them. It must be said, these Usurpers did not plunder and persecute without some resemblance of compassion. For by the Act, a fifth part of the profits of the benefice, is allowed to the wives and children of the ejected Ministers."

It is to be lamented that this resemblance of compassion, was not imitated in lord Clarendon's Act of Uniformity, stat. 13, 14, Car. 2. c. 4. Of the proceedings under this Ordinance or Statute as he calls it, Collier says not a word.

were these, with some other, Mr. Hewes, Mr. Tickle.

• But to proceed: As I stood silent before them, Mr. Dunch turned to me, and with much seeming bitterness and passion spake thus: Dare you deny Christ to be God? And again, How dare you defy the God-head of Christ? To whom I replied, I came to know my Charge which was exhibited against me; and that I hoped he had not judged my cause before it was heard.

Hereupon the Chairman commanded Langley the Clerk to read these following Articles in open Court.

ARTICLES against Dr. PORDAGE of Bradfield.

1. That the Fiery Deity of Christ mingles and mixes itself with our flesh.
2. That the imputative righteousness of Christ is a sapless righteousness.
3. That the discoveries of the sinfulness of sin, the terrors of the law, the death of Christ, the free grace of God, are fleshly and flashy discoveries.
4. That the liberty and freedom spoken of, purchased by the Blood of Christ, and applied by the changing and cleaving of the soul to, is not a liberty or freedom from the guilt of sin, the curse of the law, the wrath of God; but the Fiery Deity of Christ in the centre of our souls.
5. That by male and female, Gen. i. we are to understand by male\* the Deity, by the

\* This seems somewhat to resemble one of the fundamental doctrines of the Moravians. What a tissue of absurdity, obscenity, and impiety they derived from it may be seen in "A Candid Narrative of the Rise and Progress of the Herrnhuters, commonly called Moravians or Unitas Fratrum, by Henry Rimus, Lond. 1753." "A Supplement to the Candid Narrative, &c." "A Solemn Call on count Zinzendorf, to answer all and every Charge," &c. and "A Second Call on Mr. Zinzendorf, &c. Lond. 1757," (All by the same author.) "A True and Authentic Account of Andrew Frey, &c." "An Expostulatory Letter, addressed to Count Zinzendorf, &c. by George Whitefield, A. B. Lond. 1753." "Queries humbly proposed to the Right Reverend and Right Honourable Count Zinzendorf, Lond. 1755." And "The Moravians compared and detected, (by Bishop Lavington) London 1755." See also Art. Zinzendorf in the Biographia. In a Conference concerning some of their religious doctrines, count Zinzendorf their founder, thus expressed himself. "In ipso actu conjugali moriturnus possem dicere salvatori, Veni de isto actu, h. e. quem nomine tuo peregi." Zinzendorf, by the addition of blasphemy, has given to the profligacy of Ovid's wish,

— Mihi contingat Veneris languescere motu,

'Cum moriar, &c.'

perhaps the only aggravation, of which it was susceptible. The learned and penetrating

female the Humanity; and that these two became one flesh. These things were delivered without any limitation whatsoever.

6. That gifts and graces of the Spirit are but flesh.

7. That Christ is a Type, and but a Type.

8. That Christ is not God.

9. That Christ is not Jehovah."

*Tickle* witnesseth.

After these Articles were read the chairman demanded my Answer. To whom I replied, That I had been acquitted from all these, four years since, by the Committee of Plundered Ministers, and that after a full hearing and debate; therefore I desired that (according to law) they would pass by these old ones. But if they had any that were new, I told them I was ready and willing to receive and answer them. I further replied, I hoped they would give me the liberty of a felon, who, after trial and acquittal, cannot be questioned for the same thing again. To which Mr. Dunch replied, with much scolding fierceness, You are worse than a felon, for aught I know. Which language coming from a Judge to the Defendant before trial, let all sober persons judge of, who are acquainted with the rules of civility, morality, or Christianity.

Here Mr. *Hewes* the minister interposed, affirming, That a felon might be acquitted at one assizes, and hang for the same thing at the next: of which he gave an instance in a story not worth the relating. To which I replied only this, That it could not be for the same he was acquitted of before. But I seeing that he had gone *ultra crepidam*, beyond his office, and beyond reason, said no more to him; though he was very bitter and pragmatical, speaking oft as judge, although he was but an assistant, and that only in reference to Ignorance and Insufficiency.

But afterward, applying myself to the Chairman, I further urged, That these Articles were not within the cognizance of the Commissioners, in that I had been discharged from them, by those who had full power and authority to do it.

After this, all were commanded to withdraw; and about an hour after I was called in again, and asked for my Discharge. I answered, I came now only to know my Charge; and that I had not my Discharge there, but should bring it when they would appoint me. Then they declared, That notwithstanding my Discharge in another court, yet it was the judgment of the Commissioners, that they had power to take cognizance of the Articles exhibited. Whence they made this Order, viz.

Bayle, thinks that Laus herself would not have participated in the abandoned dissoluteness of this sentiment, but would rather have deprecated such a fate; though, indeed, we learn from a fragment of Philætarus (quoted in the 13th book of the *Deipnosophists* of Athenæus) that it actually befel her; *αἰδὼς ἀνυμνήσθη*.

*Berks*, ss. By the Commissioners for ejecting of Scandalous Ministers, &c. October 5, 1654, at the Bear in Spenshamland.

"Dr. John Pordage, Rector of Bradfield, in this county, hath in obedience to our warrant, dated the 13th of September last, to him directed, this day attended, and pleadeth that he hath been already discharged from the Articles that are exhibited to us against him, by the Parliament and the late Committee of this county, and therefore not again to be questioned or proceeded against for the same by these Commissioners. But the said Doctor hath produced no such Discharge.—Resolved, upon the question, That by virtue of the Ordinance of his highness the Lord Protector and his Council, for ejecting of scandalous, ignorant, and insufficient Ministers and School-Masters, the said Commissioners have power to question the said Doctor upon the said Article; and that notwithstanding his Plea, as aforesaid, of a former Discharge.—And it is thereupon ordered, That the said Doctor do give his positive Answer to the said Articles unto us on this day fortnight, being the 19th instant, at this place: Whereof he is not to fail."

Now this was the substance of the things which were transacted the first day of my Appearance, which I have here presented in truth and righteousness to the impartial reader.

My second Appearance before them was the 19th of October, at the same place. The Commissioners then sitting were these: Mr. Wightwick, Chairman, Mr. Dunch, Mr. Evelyn, Mr. Bell, Mr. Mills. The Ministers, Mr. Woodbridge, Mr. Fowler, Mr. Hewes, with some others. The first thing they demanded, was my Answer to the Articles exhibited against me. But I desired them to receive my Discharge, which I hoped would be instead of a full and satisfactory Answer. So I produced it; and it was received by them, and delivered unto the clerk; who, after it was read, took a copy of it, and then returned it to me again. The tenor of it was as followeth:

At the Committee for Plundered Ministers, March 27, 1651.

"Upon hearing the Cause, in presence of parties and counsel on both sides, concerning Dr. Pordage, Minister of Bradfield, in the county of Berks; and upon reading the Papers and Examinations depending against him before this Committee, and full hearing what could be said by both parties; this Committee hath taken the said cause into serious consideration and debate: And do thereupon order that the said cause be dismissed. And the same is hereby dismissed. GILB. MILLINGTON."

Afterward they asked me how they should know that it was a true copy. I returned answer, I received it from their clerk there present, who knew it to be true: and besides, I had a friend by, who being with me when I received it, could attest the truth of it by oath.

Then they waved my Discharge, and called for my particular Answer to the Articles, alledging, that notwithstanding the Discharge, the Commissioners had judged the Articles under their cognizance. So that after I had pressed my Discharge with as much earnestness as in modesty I could, they still hastily calling for my further Answer, I was necessitated to give in this which followeth:

My ANSWER to the Articles exhibited against me, consists in these Particulars.

*Partic. 1.* I humbly conceive that none the Articles exhibited against me are comprehended in the Act, entitled, 'An Act against several Atheistical, Blasphemous, and Execrable Opinions, derogatory to the honour of God, and destructive to human society:' without the sense and meaning of the words expressed in the Act be stretched and wrested beyond the literal scope and drift of the Act. And this is not my judgment only, but the judgment of some pious and judicious lawyers of this land. Which thing in all humility I leave to your serious considerations.

*Partic. 2.* I humbly conceive that the fore-mentioned Act cannot take into cognizance those Articles exhibited against me; because they are acknowledged by the accusers to have been uttered a year before this Act had a birth in the world. Now can any guilt be legally imputed from any law, before the original being of it? This seemeth contrary to reason. Now those Articles were charged upon me Aug. 16, 1649, and this Act made and published Aug. 9, 1650.

Moreover, these Articles are not punishable by that Act, because, according to the conclusion of the said Act, no person is to be impeached, molested, troubled, or punished, for any offence mentioned in that Act, unless he be for the same offence accused, presented, indicted, or convicted within six months after such offence committed. Now it is six years since some, and four since any of these expressions were pretended to be uttered by me.

*Partic. 3.* I humbly conceive that the fore-mentioned Act cannot take into cognizance the Articles exhibited against me: because, upon Examination of Witnesses on both sides, I was cleared by the Vote of the honourable Committee of Berks, who had full power, by an Act of Parliament, to put out and to put in Ministers in this county.

*Partic. 4.* I humbly conceive that the fore-mentioned Act cannot take into cognizance the Articles exhibited against me; because, after Examination of Witnesses, and after a full hearing, I have been dismissed and acquitted from all guilt and offence charged upon me from them, by the honourable Committee of Plundered Ministers, who had full power to put out, and to keep and put in Ministers. Now the judicious lawyer saith, That these Articles having had their original dependence before two Committees of Parliament, who had an absolute power, by Act and Ordinance of Parlia-

ment, to put out and put in ministers, and they having cleared and acquitted me from the pretended guilt of such Articles, it is not according to the liberty of the subject, or tenor of the law, that it should be within the cognizance of this Act, or of this Committee; it being against that fundamental maxim of Magna Charta; 'Nemo his punietur pro uno delicto.'

Moreover, it seemeth contrary to the sixth Article in the "Instrument of Government," published by his highness the Lord Protector's special command; in which it is expressed, 'That the laws shall not be altered, suspended, abrogated, or repealed, but by consent of parliament, save as it is expressed in the thirtieth Article.' Therefore my former legal Discharge, according to the former Acts and Ordinances of parliament, is still in force, and holds good, not being abrogated by the government, or by any thing expressed or included in the said thirtieth Article of Parliament.

I shall now proceed to answer each Article in particular.

*Art. 1.* "That Christ is not God: That Christ is not Jehovah."

*1 Part. Anse.* I do acknowledge that such expressions were uttered by me: But I hope the bare expression of such negations doth not make me come within the guilt of the act; for it must be known what words preceded such expressions, and what followed. To say in preaching, 'There is no God,' doth not make the preacher guilty of Atheism, if the words going before be but annexed, 'The fool hath said in his heart, there is no God.' So do but annex the subsequent words to the former expressions, That Christ is not God, viz. the Father; That Christ is not Jehovah; Jehovah taken strictly for the person of the Father, the first person of the glorious Trinity: I say, add but these words, and there is nothing blasphemous or culpable in such expressions.

*2 Part. Anse.* Though I do acknowledge that such expressions fell from me, yet I never avowedly uttered or maintained such propositions; for they were only uttered by way of dispute, and that upon this occasion: Mr. Daniel Blagrove, then being Chairman of the Committee, demanded of Mr. Tickle what blasphemy was. He answered, evil-speaking against God the Father. I replied, a lame definition of blasphemy. Had Mr. Tickle said evil-speaking against God, which is a word implying the Trinity in Unity, then there had been no occasion given of contest; for the ground of these expressions arose from the weakness of his definition of blasphemy, in that he said blasphemy was evil-speaking against God the Father. To which I replied, His definition of blasphemy doth not reach that of which he accused me; for that which he charged me with, is not blasphemy against God the Father, but against Christ, God the Son. And I have uttered no evil-speakings against God the Son, but seemingly to my accuser, in saying, That his imputative righteousness would prove a sapless righteousness to all those that had not the

fiery deity of Christ in the centre of their souls, burning up their lusts and corruptions. Mr. Tickle then replied to the Committee, pray take notice that the Doctor denieth that Christ is God, which I prove out of John i. 1. To which I replied, Christ was not God the Father, but God the Son. (Christ is Jehovah, and so called the Lord our Righteousness, said Mr. Tickle. To which I replied, Christ is not Jehovah, if you take Jehovah for the person of the Father. And this is the truth, as the whole Committee of Berks then present can testify; by whose Vote I was then cleared of all these unworthy aspersions, and dismissed; and since, upon proof of witnesses, acquitted and dismissed; and that after a full hearing by the Committee of Plundered Ministers.

3 Part. *Ans.* I do humbly conceive, that although the former act did expressly adjudge and condemn evil-speakings, or blasphemy against Christ, yet my delivering such expressions in an extemporary dispute, viz. That Christ was not God, or Jehovah, did not make me obnoxious to the guilt and penalty of that act; because p. 980 & 981, they only are condemned as guilty, who shall avowedly profess, maintain, or publish in word or writing, such or such execrable opinions: which I never did. Nay, I profess avowedly the contrary, and do declare in the sincerity of my heart, That the thought never entered into my heart, to deny the God-head or Deity of Christ; but I have avowedly in words maintained, and published by preaching, That Christ is God, out of that text, John i. 14, 'The Word was made flesh, &c.' From whence I did maintain and publish, That Christ was God, co-equal, co-eternal, and co-essential with the Father, contrary to all those blasphemous and execrable opinions, that deny Christ to be God. So that now I hope the mere uttering such expressions, by way of dispute, before a judicious and understanding Committee, doth not make me a transgressor, according to the true sense and meaning of this act.

*Artic. 2.* 'That the imputative righteousness of Christ is a sapless righteousness.'

*Ans.* I thus deliver the truth: As I was paraphrasing on that portion of Scripture mentioned in Dan. ix. 24, of everlasting righteousness, I did say words to this effect: 'That the imputative righteousness of another was a sapless righteousness to all those that had no right or interest in it.' I shall desire a little to explain myself on this proposition, that the imputative righteousness of Christ in this sense will prove a sapless righteousness: For he that hath not the Spirit of Christ dwelling in his heart by faith, notwithstanding all this application of Christ and his merits, yet to him it is but a sapless righteousness: so with the Scripture, 'He that hath not the Spirit of Christ, is none of his,' notwithstanding his application of the imputative righteousness of Christ to himself: But here I do not deny the imputative righteousness of Christ, nor his active and passive obedience to be the material cause of his justifi-

cation; yea, I own and acknowledge Christ's righteousness to be the soul's righteousness in point of justification, when it is applied upon a true ground, according to the true sense of the Spirit in the Scriptures.

*Artic. 3.* 'That they should look to the fiery nature of Christ's Deity in the centre of their souls, burning up the dross and chaff of their lusts and corruptions.'

*Ans.* For the explanation of this Article, we must consider these are scripture-metaphors, and Christ is often clothed with a garment of fire, according to that of Paul, Heb. xii. 29. 'Our God is a consuming fire;' and in another place, 'Christ shall come in flaming fire.' None, or few, understand these Scriptures, or the like, of elemental material fire; but either of the fire of his divine love to burn up our lusts and corruptions, or the fire of his divine justice or wrath in destroying sin and sinners.

*Artic. 4.* 'That the fiery deity of Christ mingles and mixeth itself with our flesh.'

*Ans.* I was then speaking of the mystical Union betwixt Christ and his Church: and in the illustration of this Union, I applied that expression out of the 5th of the Canticles, 'he mingleth his wine and his milk together.' So in this Union, Christ's divine nature mingleth itself with our humanity, his spirit with our flesh. This expression Mr. Tickle was pleased to charge with blasphemy; asking me what I meant by flesh. I answered in conference, by flesh I understand not the sinful and fleshly part of the soul, that lusteth against the spirit; for with this there can be no union. 2. By flesh I mean not the outward elementary flesh of the body; but by flesh I understand our pure humanity, the pure regenerated part of the soul, the converted part of our spirit: and thus the spirit of Christ and regenerated part are really in union one with the other, according to the Apostle's phrase, 'We are made partakers of the divine nature.' And against this answer he had nothing to reply.

*Artic. 5.* 'That Christ was a Type, and but a Type.'

This was in conference; he asked me whether Christ was a Type or no. I answered, Christ was a Type, so expressed 1 Tim. ii. 21. How was Christ a Type, replied Mr. Pendarvis? I answered, his life and conversation was a Type, that is, a pattern and example for us Christians to square our lives and conversations by. Who denies this? said he. Why, I affirm no more, said I, than that Christ is a Type. Is he but a Type, replied Mr. Pendarvis. I answered, why he you thus upon the catch? I say Christ is a Type; but I will not affirm Christ is but a Type. And this they both confess in their answers.

*Artic. 6.* 'That the gifts and graces of the Spirit are but flesh.'

I confess I said the common gifts and graces of the Spirit were but flesh; but this I opened after this manner, that they were but fleshly, weak, and carnal in point of justification, in point of trust and confidence in regard of sal-

vation and life eternal; and no otherwise, as their own witnesses on examination confessed before the honourable committee of Berks.

To conclude: as for these Articles, especially all the latter, I look not upon them as under the cognizance of the act; yet for your satisfaction I have transcribed my former Answers, and do here present them again to your consideration, by which you may clearly see my innocency in reference to the horrid opinions for which I am accused. JOHN PORDAGE.

This being read by the clerk, we were all commanded to withdraw. About an hour or twoafter, I was called in again; and they told me, if I would, I should have an order to fetch in my witnesses to prove what they could on my behalf in reference to that charge. I replied, that I hoped my discharge and answer were sufficient, and that they would not put me to the trouble and charge of traversing this business, *viva voce*, by my witnesses again; in that besides my Discharge I had brought all their Depositions delivered by oath to the Committee of Plundered Ministers; which I desired might be then read before them, because the witness could but say, *viva voce*, what was there wrote down.

Hereupon I delivered them to be read; and so being handed to the clerk, the commissioners asked me how they should know them to be true. I replied, the clerk delivered them as a true copy, and I would affirm on my oath, that they had not been altered since I had them. But notwithstanding this, they rejected them, alledging that they would not take notice of any written depositions taken out of another court; but that I must again bring in the former witnesses, to testify what they could by word of mouth: So that all the reasons and arguments I could use, could not prevail with them to free me from the charge and trouble of bringing in my witnesses again; for which the clerk was then commanded to draw me up an Order.

“Berks. By the Commissioners for ejecting of  
•Scandalous Ministers, Octob. 19, 1654.  
At the Bear in Speenhamland.

“Dr. Pordage of Bradfield hath this day again attended, and hath exhibited an Answer in writing to the Articles exhibited against him. Ordered, that the said Doctor do attend again before us on this day fortnight at this place; at which time he is to give answer to the additional Articles now exhibited against him, and to produce his Witnesses, if he have any, for proof of his Defence; and summons are to issue out for that purpose, if he desire the same. Then they told me they had a new Charge of Articles against me; which were these that follow, then openly read by the clerk.

ARTICLES against Dr. Pordage, Parson of Bradfield, to prove his Ignorance and Insufficiency for the Ministry.

1. Imprimis, one mistress Lewyn being with child, and near the time of travail, sent for Dr.

Pordage's mother to be her midwife; but he would not suffer her to go, saying, they would not be guilty of such a beast-like life, menning mistress Lewyn's being with child by her husband.

2. The said Dr. Pordage coming to the house of Mrs. Lewyn, in his discourse with Mrs. Lewyn, blamed her for having children by her husband, and argued with her the unlawfulness of having children by her husband.

3. In his discourses to Mrs. Lewyn concerning the same subject, endeavoured to maintain the unlawfulness of their having children, and said that Adam was made male and female in himself, and had he not fallen, he had brought forth children himself: and seemed to maintain and prove the same by Scripture and otherwise.

4. In his discourses with Mrs. Lewyn, which was about the time that one Everard was with him in his house at Bradfield, who was generally reputed to be a conjurer, he asked Mr. Lewyn whether he would not be afraid if he should see his own picture or shape; intimating that he himself had used to see his.

5. The said Dr. Pordage hath had for some weeks together in his house the said Everard, and one Tawny who stiled himself king of the Jews, who had been questioned (as it is generally reported) for holding dangerous and unsound opinions; as, That there is no hell, and the like.

A True Copy,  
Mat. Langley Regist.

JOSEPH COOK.

After these were read, I desired the Court in the first place to finish the first paper of Articles: urging, that if they were sufficient, they might save both them and me much trouble. But this they denied, though I much urged it: Whereupon they commanded this subsequent Order to be drawn up, viz.

“Berks, ss. By the Committee for ejecting of  
Scandalous, Ignorant, and Insufficient Mini-  
sters and School Masters in this County,  
Oct. 19, 1654.

“Ordered, that Mr. John Tickle, Mr. John Pendarvis, Mr. Francis Pordage, John Higgs, Gifford Luntton, Richard Luntton, Mary Pockock, and Roger Stevens, do make their personal appearance before the said Commissioners on Thursday the second day of November next, by eight of the clock in the morning, at the Bear in Speenhamland by Newbury, to testify their knowledge of all such matters as should be propounded unto them concerning Dr. John Pordage of Bradfield in this county; whereof they are not to fail. Given under our hands and seals, the day and year above-mentioned.  
SAMUEL WIGHTWICK. SAMUEL DUNCH.  
AB. EVELYN. ANGELL BELL.”  
ED. MILLS.

But this I must speak on the behalf of Mr. Wightwick and Mr. Evelyn, that by their presence things were transacted that day with much more seeming modesty and calmness than

at other times; the ministers then containing themselves within the limits of due silence, which gave me some hopes that the latter part of my trial might be transacted in some moderation, equity, and civility. But these two sitting no more after that day, there broke forth much confusion, rashness, and civility in their carriage; some ministers (who were bitter enemies against me) acting the part of Commissioners, and seeming to have great influence upon all their proceedings, being suffered to break forth into unceasing scoffs and railings against me in the open Court, as it will afterward appear. But thus much for my second day's appearance, here represented according to the line of truth and equity.

On the second of November I appeared before them again at the same place, according to their last Order, at which time major Fincher was chairman; besides whom there were present, Mr. Dunch, Mr. Stroud, Mr. Cook, Mr. Bell, with two or three more Commissioners; the ministers were Mr. Fowler, Mr. Woodbridge, Mr. Hughes, Mr. Tickle, &c.

The first thing they demanded of me, was to give in my Answer to the second Charge of Articles exhibited the last day against me. I replied that my Answer was ready; but I desired that they would keep to their own order, and first hear my witnesses, and so finish my first Charge, that we might not run into confusion. But they would not hearken to this rational request, importuning me for my Answer, resolving to hear nothing till I had given it in: So being necessitated to yield to their command, I gave in this subsequent order.

My ANSWER to the second Article exhibited against me, is as followeth:

In the first place, I shall take liberty to reply to the title of the Articles: which is, To prove my ignorance and insufficiency for the ministry, by the Articles produced.

*1 Part. Answer.* I do here humbly desire, that ignorance and insufficiency for the ministry may be preserved as distinct heads from scandal and heresy, according as it is intended by the authors of the ordinance: For certainly it is against the judgment of the Lord Protector, and the intentment of his Council, who made the ordinance, to confound that which may be called scandal or heresy, and insufficiency, together. We see it is usual this day among us, for knowing and learned ministers to differ in their judgments, both in doctrine, worship, and things indifferent; who yet thereupon are not accounted ignorant and insufficient for the ministry. So that although these Articles could be proved true, they are to be referred either to scandal or heresy, and not to ignorance and insufficiency.

*2 Part. Answer.* If ignorance and insufficiency for the ministry be taken for the want of an inward special gift, as it is qualified with human arts and sciences, attained by much pains and industry, in relation to academical learning: Or if ignorance and insufficiency for the minis-

try are taken for the want of inward abilities, qualified with spiritual gifts, as with those of prayer, utterance and preaching: Or, if ignorance and insufficiency be taken for the want of a saving principle of grace, manifesting itself in convictions of sin, legal terrors or evangelical illuminations into the free grace and love of the Father, or into the meritorious death of Christ for the redemption of lost sinners: Or, if it be taken for those effects flowing from such a saving principle of life, as that of saving faith, true repentance, pardon of sin, peace of conscience, a holy life in all universal obedience to the holy will and righteous commands of God: Then I humbly conceive, that mere ignorance and insufficiency, without the pretensions of heresy and scandal, will be found a bed too short, and a covering too narrow for my ejection out of the work of the ministry, according to the true intent of the ordinance.

*3 Part. Answer.* Hence my humble desire to you for time to come, is, that you would not make your Epithet of ignorance and insufficiency so small, that heresy and scandal may not stand distinct in me; and that you would not make your Shield of ignorance and insufficiency so great, as to swallow up heresy and scandal into the boundless and endless extent of it: For what is this, but to falsify the balances of justice and equity by a deceitful weight, in not preserving insufficiency as a distinct head from scandal and heresy; which in time may prove very prejudicial to that liberty of conscience, which of late years hath been, and is still preserved and asserted by the rulers of the nation:

In the Second Place, to the Articles themselves I thus reply:

*Answer. 1.* As to the four first, I know not how or what positively or directly to answer to them, till I see them first proved by oath, and that by such persons who are without just exceptions; and then I shall be capable of returning a more full and complete answer.

*Answer. 2.* Neither do I see, that seemingly to maintain and argue, by way of dispute only, the unlawfulness of Mrs. Lewyn's having children by her husband, for the sifting forth of truth from error, could it be proved that I did so, could argue or evince my ignorance and insufficiency for the ministry: For thus, though it were evinced to be my crime, cannot in justice and equity be referred to that head of insufficiency, but to scandal; except ignorance and insufficiency be resolved into the boundless liberty of the wills of the judges that what they deem ignorant and insufficient, must be ignorant and insufficient, whether ignorance and insufficiency be real in such a subject or not.

As to the Fifth Article, which concerns my giving entertainment in my house to one Everard, reputed a conjurer, and to one Tawny, reported to hold unsound opinions, I thus answer:

As to the first part of it, I confess that one Everard, about four years since, was received into my house at Bradfield, for the space of

almost three weeks, and no longer; and thus after this manner: He came in harvest-time with a new pair of harvest-gloves on his hands to shew his willingness and readiness to work and asking to speak with me, told me, that if pleased to employ him in harvest-work, he came to offer his service. Hereupon I entertained him as a workman. And thus you see both the manner of his coming, and the cause of his Entertainment.

Whereas it is said he was generally reputed a Conjuror:

*Ans.* 1. I answer, I never heard any the least intimation from any, that he was ever suspected to be a conjurer, till after his departure from my family: If he was a conjurer before he came, it was more than I knew, or had heard of; but after his departure, I confess there arose a general report up and down the country, that he was a conjurer. But from that time to this, I have never seen him, nor know what is become of him.

*Ans.* 2. After his absence, I do further affirm, that I was strongly inclined to believe according to the general rumour, that he was a conjurer. Hereupon I was in a great strait in my own spirit, whether I should prosecute him or not; my zeal for God's glory, and my obedience to the command of God, that saith, "Suffer not a Witch to live," giving me some impulsions to do it. But after serious debate and consideration within myself, I resolved thus: That my own scruple of conscience thus: That my own persuasions and jealousies, though they had some ground of probability, yet not being certain, afforded me not a sufficient ground of prosecuting him as a conjurer, or of swearing positively he was such. Now I leave it to your serious considerations, whether this tenderness of conscience keeping me from prosecuting of him, or swearing against him, for fear of that heinous sin of perjury, makes me either ignorant or insufficient for the ministry.

As to the second part of the Fifth Article, which concerns my entertainment of one Tawney, reputed (as it is there expressed) to be one that holds unsound opinions:

*Ans.* I answer, It is well known, as I invite none, so I turn away none that come to visit me, though their principles in matter of doctrine, worship, and discipline, be different from mine. I will here shew you briefly my grounds and ends: My grounds are these: I look upon it as my duty, according to the gospel of Christ, to entertain all strangers that be in want and necessity, professing the name of Christ. If enemies hunger, we are to feed them; if they are naked we must clothe them; and as for strangers, we are to lodge and entertain them, Heb. xiii. 2. And as in the practice of this I break no law of God, so no law of man. And you may remember, that in the 37th Article of Government it is expressed, That all such as profess faith in God by Jesus Christ, though differing in judgment from the doctrine, worship, or discipline publicly

professed, so as they abuse not this liberty to the civil injury of others, nor to the actual disturbance of the public peace; shall be protected; and then surely their hungry bellies may be fed, their backs clothed, their wants supplied, and their persons lodged and entertained.

And further, my ends are these, which are pure and evangelical, That I may prove all things, and hold fast that which is good: that I may try the spirits, for many false spirits are gone forth into the world. Now how are they to be proved and tried? Not by carnal weapons, as by penalties, mulets, imprisonments, and other external punishments; but by convincing of them with sound doctrine, christian discourse, spiritual arguments, and by the example of good conversation. And thus God's glory and the good of others are my only ends, in giving entertainment to all strangers that come in civility to visit me.

Now the cause of many strangers coming to me as guests from all quarters of this land, ariseth from these lying printed pamphlets, which have hardly a word of truth in them; these draw all seeking inquiring minds to visit me, for divers ends best known to themselves: Let it but be proved that ever I gave entertainment to any common swearer, or to any open drunkard, sabbath-breaker, or to any known profane person, and I shall judge myself obnoxious to your censure; but all that I give free entertainment to, appear clothed under some shew of Godliness or other: but if they have got the power, it will be their own misery.

In a word, the strength of this article doth out amount to thus much, that as Christ was supposed to be a friend of publicans and sinners, so am I supposed to be a friend to all people that profess religion, and walk orderly, be their opinion in matter of doctrine or discipline never so much differing from mine own, or from those commonly received: yet this doth not argue my ignorance or insufficiency for the ministry; but if in it any thing be culpable, it is to be referred to the head of scandal. But there being no law of prohibition, I cannot see any transgression in it, either against the law of God or man.

To conclude, I cannot give a more direct answer to these Articles, being matter of fact, all I see them proved, and each Article referred to its proper place, either of scandal or heresy, or ignorance and insufficiency.

JOHN PORDAGE.

This being read, we proceeded to the proof of the first Charge of Articleless attested by Mr. \_\_\_\_\_, one of the assistants whom I desired to be sworn in the open Court; alledging that I was altogether ignorant whether he had sworn or not; but the clerk affirmed that he had done it already: But after much dispute, it was ordered that I should hear him sworn in the open Court. Then I craved liberty to cross-examine him openly, and began to put my interrogatories to him; but this just privilege they peremptorily denied me, though I used many reasons and arguments to shew the equi-

ty and reasonableness of it. Then they commanded me to write down my Interrogatories, which should be proposed and answered in private, without my presence, according to their fixed resolution. Then all being commanded to withdraw, I wrote down my Interrogatories; and when I gave them in, I desired they might be asked in the open Court: but it was denied. Then I requested that I myself might be present at the cross-examination, though all the rest withdrew; urging, that although I had given in my Interrogatories, yet there might be many necessary circumstances and questions emergent in the examination, which I could not then give in in writing, nor make use of without I was present, which yet might serve very much to clear the truth: but notwithstanding this, and more which was then said, I could not prevail, but was commanded to withdraw.

After this I was called in again, and as I thought, to receive Mr. Tickle's answers to my interrogatories; which, though I pressed it with much earnestness, was denied, they resolving, as it seemed to me by their answer, to keep them private till publication: which appeared to me very partial dealing, in regard I could not know how the questions were answered, against the time of making my Defence by negative witnesses.

But afterwards importuning the Court to examine my witnesses according to their own order, I was interrupted by their commanding of the clerk to read a third Charge of Articles, exhibited against me by Mr. Fowler, an assistant Minister to the Commissioners; whose zeal moving swifter than the clerk's slow reading of the Articles, caused him to take them out of his hands, and to read himself, with much courage and resolution. The Articles were these that follow:

Further additional ARTICLES exhibited against Dr. Pordage, by Mr. Fowler, Minister of St. Mary's, in Reading.

1. That the righteousness of Jesus Christ was a poor, vain, sapless righteousness.
2. That Jesus Christ was not perfect, alleging that Text to confirm it, because he cried out, 'My God, my God, why, &c.'
3. That the Blood of Christ was not meritorious of any man's salvation.
4. That it was a poor thing to live upon the blood of Christ; and fetching it over again, in a contemptuous kind of speaking, 'Pish,' said he, 'thou art a babe, thou knowest nothing; to live upon the blood of Christ, is a poor thing.'
5. That one speaking to him of the glorious Persons in Trinity, he replied, 'Persons in Trinity! Pish, there is no such thing.' And again, 'There is no such thing as Persons in Trinity.'
6. That it was a weakness to be troubled for sin.
7. That he might say any thing to the men of the world.
8. That he asserted he knew nothing to the contrary, but that a man might company with

more than one woman; being taxed with keeping carnal company with a woman in London.

9. That he hath very frequent and familiar converse with Angels.

10. That a great dragon came into his chamber with a tail of eight yards long, four great teeth, and did spit fire at him: and that he contended with the dragon.

11. That his own angel came and stood by him while he was expostulating with the dragon; and the angel came in his own shape and fashion, the same clothes, bands and cuffs, the same bandstings, and that his angel stood by him and upheld him.

12. That Mrs. Pordage and Mrs. Flavel had their angels standing by them also, Mrs. Pordage singing sweetly, and keeping time upon her breast; and that his children saw the spirits coming into the house, and said, Look there father: and that the spirits did often come into the chamber, and drew the curtains when they were in bed.

13. That the said Mr. Pordage confessed, that a strong enchantment was upon him, and that the devil did appear to him in the shape of Ectiad, and in the shape of a fiery dragon; and the whole roof of the house was full of spirits.

14. That Mrs. Margaret Pendar acquainted with this doctrine of spirits, and pretended to be converted by visions of angels, doth think that she was bewitched by them of Bradfield.

#### *Her Confession.*

She was taken ill upon Wednesday in the afternoon, in July 1653. About 9 of the clock the same night, there appeared the vision of a man standing at her bed's feet: on Thursday the next day he had a book in his hand, and stood by her all that day and said nothing. On Friday it spake audibly unto her, saying, Why art thou so discomforted? I answered, 'A wounded conscience who can bear?' He replied, He that hath wounded thee, will make thee whole. I spake much of my own unworthiness; he answered, There was worth in Christ, and he hath paid a ransom for me. Then he told me, that that book in his hand was the book of the Lamb, and that my name was written in it. I saw the book, a broad book with a parchment cover: and I saw writing in it, and then was I lifted up with a great deal of joy. And about 4 of the clock the same Friday, a dark angel came and stood by the other vision, with a knife in his hand, and said, Thou hast had a great deal of joy: and offering her the knife, bid her dispatch herself, and she should enter into that eternal rest her soul so much thirsted after. Upon this she trembled, the bed shook, and my mistress held me. The same Friday I had visions presented upon the wall; I saw the world, and the resurrection of the dead, and the Son of Man appearing in the clouds of heaven.—She saw clearly the vision of a friend of her's in London, in her chamber at Southcot; her friend was much inclined this way: she much wondered



at it, and told Mrs. Pordage of it; who answered, Alas! so do we see abundance of those we never knew before, when once they come into our way.—On Saturday Dr. Pordage came to her, being sent for, and prayed in a very strange language, she did not understand well what he said: she heard him say, Lord; but nothing of Jesus Christ, but the abyss and bottomless eternity. She heard a great noise of drums and trumpets. She asked the doctor what the rattling of drums and trumpets meant? He answered, It was an alarm to the spiritual war.—One of the nights she saw the vision of young Mr. Daniel Blagrove, which came to her bed-side: She took him by the hand, and it felt cold. She asked the doctor what it meant? He answered, The coldness of the hand did signify his beginning to be cold to vanity.—She asked Dr. Pordage what the visions meant? He answered, They durst not reveal one another's visions; he did not question but God would discover himself, and reveal wonderful things to me.—She was from Wednesday noon till Monday noon, and did not eat one piece of bread, but sometimes a little water and sugar; and she said she was not sick at all, after the first two hours: and when she was about to eat, she heard a voice come to her; 'We are not to live upon bread, but 'upon every word of God:' And upon that voice she did not eat.

She saith, that she hath oftentimes seen at London flashes of light in her chamber, and at last heard a voice which put her into a very great fear and sweat, saying, Thou hast married a lump of clay; but thou must return to thy first husband, who is thy Saviour, and thou must go to Joppa. And upon this she was convinced that these visions were of the devil, because the voice was clean contrary to the scriptures. She saith, that she hath heard it reported at Southcot, That ere long Dr. Pordage should have power from him to bestow saving graces on whom he pleased; as also, that marriage was the way of beasts.

Francis Knight of Wallingford saith, That discoursing with some of Blewberry, that use to go to Dr. Pordage's, they spake very much against the lawfulness of marriage; he wondered at it, and asked them whence they now came; They answered, We came just now from the Doctor's from Bradfield.

16. Doctor Pordage's chamber at Bradfield hath sometimes been almost filled with spirits.

17. That Doctor Pordage preached, That water-baptism was not the ordinance of Jesus Christ.

18. That about Michaelmas 1653, he was commanded by his angel, or from heaven, to give off preaching, and take no more tithes; but since he conceives he hath had a dispensation.

19. That in July last, 1654, he was to be taken up into heaven; and it is said by some he hath been there, and dismissed again about his business.

20. That in the midst of these visions he is scandalously covetous.

21. That he cursed the people at Bradfield in his pulpit, and their posterity for ever in this world, and in the world to come.

22. That he preached at Bradfield, and afterward did labour to defend it pertinaciously; That the little Horn in Dan. vii. 8, was Christ; and being told that the little Horn made war with saints, yet he persisted to say it was Christ; and endeavoured to make his hearers believe that he was falsely charged.

23. That he saith Goodwife Pocock singeth the highest hymns very sweetly; that she knoweth not a word when she begins, but is taken with a burning about her heart; and when she hath done, she cannot repeat a word of it, if it were to gain the world.

24. That Goodwife Pocock lately came to colonel Evelyn, and told him, she had a word to him from God, viz. Have nothing to do with that just man.

25. And that on or about the tenth of this month Dr. Pordage sent to invite Mr. Snelling, and his wife and children, to come to the Doctor that day; and the same day Mr. Snelling and his wife did go to the Doctor's house; and when he came, Mr. Snelling desired to know wherefore he sent for him? Dr. Pordage told him, to go with him and meet his bridegroom. And then Mr. Snelling told the Doctor he knew not what he meant, and so departed. And the next morning Mr. Francis Pordage met with Mr. Snelling, and told him he had lost his part in heaven, being he did not wait upon the Doctor at that time.

26. That Dr. Pordage sent his man Bolt, in a very rude and uncivil manner to fetch Mrs. Forster to his house; that she being frightened at the message, and enquiring to what end she was sent for, the said Bolt answered, she should there see the heavens opened, and the colours flying in the air, and hear the drums beat, and the trumpets sound.

27. That Mr. Forster going to the Doctor's house, he told him at his first coming in, that he should see such things, as if he were emperor of a thousand worlds, he would give them all to see it. After asking him for his wife, and he answering, she was not well, and could not come, the Doctor called to them to send forth a winged messenger to fetch her, for she must come.

28. That two days after, one Goodwife Pocock coming from thence to Mr. Forster's house, and they enquiring of her, what was the cause of those behaviours in the Doctor's family? she answered, They had a foul spirit sent amongst them, and the Doctor had fought many hours with the black power, and had overcome it; for which she should ever think him a bright man: That all his family had been strangely acted, the power taking them, some in their legs, and others in their arms, and that then they spake very glorious things.

29. That Mrs. Flavel was in a trance, and when she came out of it, spake many precious things which she had seen in that trance; what was the philosopher's stone, that so many

learned men had sought after, which she knew to be the Divinity in the Humanity: and many other things to the same effect.

**FURTHER ARTICLES preferred against Dr. JOHN PORDAGE, Minister of Bradfield Parish, by some of the Inhabitants of the same Parish.**

1. That Dr. Pordage, about eight years past, did carry Mrs. Flavel behind him on horseback on the road to London, and about Hounslow did enquire for a private house, and was directed to one Goodman Loader's a smith, who lives in Helsen parish, half a mile out of the road between Hounslow and Brentford; and when he came, asked if his friend behind, being sick, might have entertainment? 'Twas answered, Yes. Then the Doctor left her there, but never owned she was with child, till she was in travail.

2. Mrs. Flavel in a short time fell in travail, and then desired no company might be called in; yet the woman of the house, Goodman Loader's wife, called in three or four. And Mrs. Flavel was then brought to bed of a daughter, having then no husband that the world knew of, Mr. Flavel being dead.

3. That Dr. Pordage came to that house, and christened that child, and named it Hannah; and the Doctor came often to visit her there, and always alone by himself. 4. That the child being put to nurse in the same parish, the Doctor moved Mrs. Flavel to Kensington, and paid the smith for her being at his house: That a little while after the nurse went to Kensington to enquire for Mrs. Flavel to pay her some money; but she was removed: and the nurse saying, she left a child with her, the company smiled, and said, They thought she was such a woman. After this the nurse's husband wrote a letter to the Doctor to Bradfield, that he was twenty weeks pay behind, and could not forbear; whereupon he was paid: and shortly after sent for the child away from the nurse's.

5. That a little while after, this Mrs. Flavel came again to the Doctor's family, and a little child called Hannah, it was also brought thither; and Mrs. Flavel took the care of it ever since. And Mrs. Flavel, being by neighbours asked whose child it was? said, a dear friend of her's: but none could ever hear in the house whose child it was. And some telling Mrs. Flavel that the child was so like her, that they should take it to be her's, had she not said the contrary; she answered as before, 'Twas a dear friend of her's, but never named whose.

6. That this child, who was called Hannah, this last summer they changed her name, and called her Ruth: they have also changed all their names: the Doctor is called Father Abraham, his wife is also called Deborah, and old Goodwife Pocock is called Rthab, and so the rest.

7. That Goodman Loader's son being a soldier, saw Mrs. Flavel in Bradfield-street, and spake to her, but she took no notice of it. Afterward Mrs. Flavel coming to his father's

house, his mother in discourse asked, Whether she lived at Bradfield? Mrs. Flavel answered, she knew no such place. I will call my son in, who saw you there. Mrs. Flavel said, People be given to lying, and would not have him called; and presently called for her horse, and went away, though before she had resolved to stay all night: and never since was there, except since the Doctor hath been questioned.

31. That Doctor Pordage is extreme covetous, and hath exacted five shillings at a time to marry one man, or else told him he would not marry him. The man told him, he could not justly demand so much: The doctor answered, without five shillings he would not marry them; and took five shillings.

32. That his preaching doth not tend to edification.

33. That he is a very ignorant and insufficient man for the work of the ministry.

September 9, 1650.

34. "I came into Bradfield parsonage in the evening, and there I heard a very mournful cry, as if it had been one in extreme pains; but what it was I know not; for it continued all the time I was at the door, which was well near a quarter of an hour; and so it continued when I went away. And then the 10th day in the morning I came unto Mr. Francis Pordage at the parsonage of Stanford Dingley; and he enquired of me what I did think of the noise that I heard? I told him I could not tell. Then he related to me, that the Lord was about a great work in this kingdom, and to this nation; and the cause of this cry was one in travail: and the pain was so extreme, that had I staid there a little longer, I might have heard it as far as the town; but now she was delivered of a man-child, and the travail was at an end, and that he and others were eye-witnesses to it."—The Testimony of Richard Seward.

35. That in Dr. Pordage's house in Bradfield, lately the New Jerusalem hath been seen to come down from heaven, all of precious stones; and in the New Jerusalem was a globe, which globe was eternity; and in that eternity were all the saints.

36. That at the Doctor's house the face of God hath been seen: not as Moses saw him, but the very face, as one man may see another's.

37. That one being in the said Doctor's house in a trance, the said Doctor's daughter being by her, said, That she saw two Angels all in white, with crowns over her head.

**The Examination of Goodman Seward concerning Mr. Pordage.**

This Deponent saith, That Mr. Pordage did affirm marriage to be a very wicked thing, contrary to the word of God. Goodman Seward telling the aforesaid Mr. Pordage, that a friend of his had buried his wife, and intended to marry again; Mr. Pordage replied, That it was a very wicked act, and wondered at it. The

Deponent replied, That he took marriage to be an ordinance of God. Then demanding if his wife should have died, what he should have done? He replied, Would you be so wicked as to marry? Thus the above-mentioned Deponent will aver with his oath.

A true Copy examined by

MAT. LANGLEY, Regist.

After he had done, it seemed not enough to him to have read such a horrid, scandalous, confused Charge to the people against me; but he proceeded to speak to them, desiring them to take notice what a strange person I was, representing me to be guilty of Blasphemy, Devilism, and of looseness in my conversation; promising to prove that Charge of Articles, or to be counted a slanderer. After which prevaricating speech he suddenly departed.

After, I further urged the Commissioners to hear the testimony of my witnesses, in reference to the first Charge of Articles, that so it might be dispatched, that so I might be freed from the trouble of answering so many together, which would unavoidably bring confusion and disorder to mine and their proceedings. I further shewed, that according to their appointment, my witnesses were present and ready, desiring them to consider that I had been at trouble and charges in bringing them; and that I must unavoidably be at more, if they would not then hear them: Notwithstanding this, they denied to hear them at that time, calling for two witnesses which they had summoned to attest my second Charge of Articles. Here I desired, that as my Charges had been openly read to the people, so the examination of the witnesses might be open, that so the people might as well hear the proof as the accusation: But this could not be granted. Then I requested that I might be present; this was also denied: So two witnesses were privately examined to the second Charge, whose examination concluded that day's transactions, in reference to me; and I received an Order to appear before them again the 22d of November, at the Bear in Reading:

“*Berks.* By the Commissioners for ejecting of Scandalous Ministers, November 2, 1651, at the Bear in Speenhamland.

“Ordered, That Dr. Pordage of Bradfield (now present) do appear again before us on Monday the 22d instant, at the Bear in Reading and that he then give in his Answer to the further additional Articles now exhibited against him. And it is further ordered, that the said Doctor do then produce his witnesses, and bring in his interrogatories in writing, upon which he will examine the witnesses in his Defence, or cross-examine them, produced for proof of the several Charges against him.”

On the day prefixed I appeared at the appointed place; the Commissioners then sitting being Mr. Dunch, chairman; major Fincher, Mr. Trapham, Mr. Stroud, Mr. Cook, Mr. Nutkins. The ministers, Mr. Fowler, Mr. Leo,

VOL. V.

Mr. Woodbridge, Mr. Tickle, Mr. Hewes, with two more.

Just as they were going to dinner, I was called in, and asked for my Answer to the last Charge of Articles: I told them it was ready, but I should be very long in delivering it; but if they thought fit, I would give it in before dinner. At this, one Mr. Trapham, a Chirurgion and Commissioner, began to be very rough, pressing me to give in my Answer, and to leave it with them. I replied, That it was in my power whether I would give it in writing only, or by word of mouth, and that I resolved of the last. So I was commanded to withdraw.

After dinner, being called in again, I read this Answer following, and then delivered it to them in writing.

My Answer to the third Charge of Articles, I present in this form following:

I shall first present something by way of general preface, and so descend to particulars.

In the first place, then, I look upon the first Articles charged upon me by young Mr. Tickle, to be as the casting of my innocent person, with Daniel, into the lion's den: But those articles, as the mouths of the lions, I conceive, were stopped, so that they could not hurt me, because the authority and just proceedings of two former Committees, authorized by acts and ordinances of parliament, with some other legal privileges, had sufficiently muzzled the mouths of those lionish Articles.

And as for the second, subscribed by an unknown name, I believe there hath not been, nor cannot be any thing proved, which may render me obnoxious to any legal guilt.

As for my third Charge brought forth by Mr. Fowler, who is both my accuser and my Judge; I look upon it as the design of the evil one, to cast me with the three children, into the hot fiery furnace of unparalleled wrath and envy: For I know it will one day appear, that these Articles were raked together from a spirit of bitterness and spleen, which seem to me as the furnace heated seven times hotter by the fire of wrath, to burn up and consume my name, liberty, estate, and posterity.

But be it known unto you, O you Judges and Commissioners! I am not solicitous what the event may be; I know the God whom I serve in the integrity of my heart, who is Jehovah, the true and only God, is able to deliver me from this hot fiery furnace, and to punish those who cast me in: But however God as yet may order and dispose of me, in reference to the execution of my enemies' intents, I believe my strict and holy conversation, with my holding forth what God in the riches of his grace bestowed upon me, will clearly demonstrate that I am no such person, as the false and unworthy aspersions of these Articles represent me to be.

As to the particular Articles, which are raked together in such confusion, without reducing of

them to their particular heads, of scandal or insufficiency, many of them being incapable justly to be referred to either, I thus begin my Answer..

*Art. 1.* 'That the righteousness of Christ was a poor, vain, sapless righteousness.'

*1 Part. Answer.* This Article was in my former Charge, and I was cleared of it by two committees, who had power legally to acquit me, even as they did.

*2 Part. Answer.* I do cordially acknowledge, That Christ's righteousness is not a poor and sapless righteousness, but very precious, being the material cause and spotless robe of a Christian's justification; and that every Saint ought to be found in this righteousness of Christ in point of justification, and not in his own self-righteousness.

*3. Part. Answer.* I deny that ever I spake such words, without some limitation; which limitation, if annexed, would free me from any guilt resulting from such expressions: And though any one should swear I spake these words, yet that would not render me justly guilty, it not being declared what preceded, or what followed in the series of my discourse; and I have many witnesses sufficiently known, and pious, who being constant hearers of me, have testified by oath, and will upon occasion again, that the scope of my ministry drives not against the due application of Christ's righteousness to the souls of believers, but against the misapplying it to those who have not the spirit of Christ living in their heart; purifying their consciences, and subduing their lusts.

*Art. 2.* 'That Jesus Christ was not perfect; alledging that scripture to confirm it, My God, my God, why hast thou, &c.'

*1 Part. Answer.* I do nakedly, without any veils, profess that I ever did, and still do look upon Christ as a most perfect copy and pattern to square our lives and conversations by; yea, to be a perfect mediator, in reference to that work he undertook for the redemption of the world, being free from the least tincture either of original or actual sin: And truly the thought of any such thing never lodged in my heart.

*2 Part. Answer.* But suppose I uttered such expressions as these, yet the manner of it will sufficiently free me from that guilt my accuser may hope, and believe I am obnoxious to by it: I confess I uttered these or the like words, yet it was only by way of relating what I heard in a sermon of Mr. Erbery's in Somerset-house, who at that time endeavoured to enumerate Christ's (supposed) imperfections, whereof he made his crying out upon the Cross, in those expressions, one. Now I leave it to your consideration, whether my relating to some that are wise and knowing, what I heard from another, with much grief to my soul, makes me in any way culpable or guilty.

*Art. 3.* 'That the blood of Christ was not meritorious of any man's salvation.'

*Answer.* I call heaven and earth to witness, that such thoughts never entered into my soul; nor did such words ever come out of my

mouth: For my judgment ever hath been, and still is, that the blood of Christ is satisfying, reconciling, cleansing blood; that it is interceding, redeeming, meriting blood, in relation to all those who through faith and patience come to inherit eternal life.

*Art. 4.* 'That it was a poor thing to live upon the blood of Christ; and fetching it over again in a contemptuous kind of speaking, Pish, said he, thou art a babe, thou knowest nothing; to live upon the blood of Christ, is a poor thing.'

*1 Part. Answer.* I acknowledge that about four years since such expressions were uttered by me to one Mrs. Grip; but without any such intent as may be supposed by my accusers, and not with that circumstantial aggravation of repeating it in a contemptuous manner; which is but a supposition of my adversary, and cannot be attested by an oath, without this witness pretends infallibly to know my thoughts and purposes.

*2 Part. Answer.* Again, this being spoken to a particular person, on a particular occasion, might be true, if the circumstances of the discourse were accordingly added; though as here presented it seems very monstrous.

*3 Part. Answer.* Therefore to make things clear, I shall here insert some particular circumstances, which may present this Article, though in a new yet true face. I coming to to Mrs. Grip's house, she took me into a private room to have some conference with me alone; where she brake forth into a violent passion of tears, weeping, and wringing her hands, and pouring forth bitter complaints and invectives against Mr. Fowler, as that he was a graceless man, a liar, a slanderer, not worthy to come up into a pulpit, or to have the name of a minister of Christ, with other such bitter expressions. The cause of which was, as she then told me, Mr. Fowler's reporting about, that she then lived in adultery. And after her passion was somewhat allayed, she brake forth into these or such-like expressions of high assurance; Christ hath loved me, and died for me, and justified me by his blood, from all guilt of sin; I am an elect person, a justified person; and what is this Fowler to charge sin upon me? These and other expressions fell from her to this purpose: from some of which I feared she was diseased with Antinomianism, and told her more than once, it was a poor thing to live upon the blood of Christ, and to look so much upon that, except she had the nature of Christ, and the spirit of Christ; asking her, where was the meekness of Christ, and the patience of Christ, to suffer as an innocent lamb quietly? but still she crying out, she lived on the blood of Christ; I told her, it was a poor thing to be thus exalted with notions of the blood of Christ, without mentioning sanctification, and those holy graces which flow from Christ's nature dwelling in the soul. Now by these expressions of mine, my scope was to make Mrs. Grip see the necessity of Sanctification, and of a pure and holy life, and

not to make void the blessed effect of the blood of Christ, applied according to the mind of God, and the true meaning of the Scripture. And now having related the circumstances as near as I can remember, I believe a sober and knowing Christian will not judge me either scandalous or ignorant for these expressions.

*Art. 5.* 'That one speaking to me of the glorious persons of the Trinity, I replied, Pish, there is no such thing as persons in the Trinity.'

*1 Part. Answer.* I do here profess and avow from the sincerity of my heart, that I believe the Trinity of persons as an article of my faith, viz. that there are three persons distinct from each other; the person of the Father, the person of the Son, the person of the Holy Ghost, yet not so as to prejudice the Unity in essence; and I so believe the Unity, as not to confound the Trinity of persons.

*1 Part. Answer.* I never uttered such expressions in that way, as to give any just ground of suspicion of my denying the Trinity. But I remember, about four years since, being before the committee of Berks, Mr. Fowler, or Mr. Gilbert, I remember not which, desired the committee to give them liberty to ask me two or three questions: amongst the rest, they asked whether there were three persons in the Deity. I answered them, I believed the Trinity as it is recorded in 1 John v. 7. There are three that bear record in heaven, the Father, the Word, and the Holy Ghost. Thus you see I believe the Trinity. But do you believe the Trinity of persons? said they. I replied, I find not the term Persons in the text; but to put you out of doubt, I do not stumble at the word Person. And this afterward I told to the above-mentioned Mrs. Grip in a private conference some years since; to whom I affirmed, that I found no such expressions as persons in Trinity in the Scripture; and that the word Trinity being a school-term, was very difficult to be apprehended by common capacities. But I never spake thus to prejudice the true notion of the persons in the sacred Trinity, which I do cordially believe; but only to shew that ordinary Christians should not be too curious in prying into that deep mystery of the three persons in the Trinity, but rather content themselves with what the scripture plainly affirms of the Father, Son, and Holy Ghost, as distinct, yet one. But to conclude this answer, pray consider what hard measure it is, thus to pick a broken sentence out of a long discourse, and so to accuse one without relating the circumstances which might serve to clear what otherwise may seem very strange to prejudiced persons.

*Art. 6.* 'That it is a weakness to be troubled for sin.'

*Answer.* I do not remember that any such expression as this ever dropped from my mouth, either publicly or privately; and I am persuaded that no one dare assert it with an oath: which if they did, would not make much to the purpose: for with a charitable qualification it may be thus made forth, that it is a weakness

for one to be troubled for sin, who hath the assurance of God's love, his sin pardoned, his person justified, sanctified, and his will converted from, and crucified to Sin: for such a one should be triumphing in the power of faith and love, enjoying sweet heavenly communion with God, and saying, O Death, where is thy sting? And there is no condemnation to them that are in Christ Jesus, who walk not after the flesh, but after the spirit. Whereas trouble for sin thus pardoned and mortified, may be an engine of Satan to make a soul question God's love, and to bring it out of a blessed spiritual enjoyment of God, into a slavish fear and disturbance.

*Art. 7.* 'That he might say any thing to the men of the world.'

*1 Part. Answer.* I answer, to the best of my remembrance, I never uttered any such unchristian maxim, much less ever held it as my judgment; and I confidently believe there is no one on the earth that dare witness it with an oath.

*2 Part. Answer.* I know very well that Mr. Fowler hath been, if not the author, yet the reporter of my holding this monstrous tenet; for he hath confidently averred, and often insinuated into some of the gentry of this county, and into his own proselytes, that I am a familist; and that it is my principle to say or unsay any thing that may make to my own advantage. Which God knows is a sad scandal and a monstrous untruth; and clearly appears, to those who know the integrity of my principles and conversation, to be a blur cast upon me from the contrivance of subtle Machiavelian policy, to prejudice all I say or answer to those horrid things objected against me; for if this be once settled in those who are to be my judges, it is vain for me to answer, deny, or avow any thing. But the Lord forgive my adversary for this his unchristian dealing, and grant he may repent of it before he comes to give up his last account before the great tribunal of Christ!

*Art. 8.* 'That I asserted I knew nothing to the contrary, but that a man might company with more than one woman; being taxed for keeping carnal company with a woman in London.'

*Answer.* I never kept scandalous company with any woman in London; neither was I ever taxed for any such things except once by Mrs. Grip, who I believe is the witness against me; and that upon this occasion.

At the time I had my former conference with her, the heat of her passion being over, she told me that I was also taxed for keeping of carnal company with a woman in London. I replied, I am a man born to all kind of sufferings; and told her, that she saw and knew the manner of my conversation; asking her whether she believed it. And she answered, No, truly. And then I solemnly protested the contrary. And this is all the taxing I ever had from any one. At which time I was earnest with Mrs. Grip to discover to me from whom she heard it: but

she put me off, telling me she did not believe it, and that she would tell me some other time. But from that long discourse I had with her, fearing, as I said before, she was deeply tinctured with the principles of Antinomianism, and not knowing whether she might not be tainted with some notions of Rantism, which at that time was every where frequently discoursed of, I took this occasion to try her; telling her (as near as I remember) that there were some that affirmed they knew nothing to the contrary, but that a man might company with more than one woman. But to speak the truth, she let it fall, without seeming to approve of any such thing. And this I solemnly avow to be the truth, as near as I can remember. And I believe Mrs. Grip dare not swear that I maintained any such thing as my judgment, or produced one Scripture or argument to defend it.

I profess to the whole world, in the presence of that eye that seeth through all hearts, that all such loose principles, which turn the grace of God into wantonness, and that run opposite to the laws of morality, civility, modesty, and sobriety, or that any ways indulge wantonness and lasciviousness, are as inconsistent with my principles as heaven and hell, light and darkness, are opposite one to another; which will one day clearly appear to the world, whatever I am now thought of.

*Art.* 9. 'That he hath frequent familiar converse with angels.'

*Ans.* As this Article is presented in general terms, without expressing whether the communion be visible or invisible, I do not see how it can touch me, though my enemies were my judges; because every true Christian hath frequent communion or converse with angels, as you may see solidly and clearly proved from Scripture by the lord Lawrence, one very learned and pious, now president of the Lord Protector's Council, in his book, entitled, *Our Communion and War with Angels*.

*Art.* 10, 11, 12, 13. 'Concerning the vision of a dragon, and the apparition of spirits.'

*Ans.* 1. I may deny these four articles as they are taken together, and expressed in those terms, and in that manner in which they are set down in my accusation; for I believe none dare swear the measures and teeth of the dragon, with the appearance of my own angel, &c. without the crime of perjury.

*Ans.* 2. I will not confess any apparitions in particular till they be proved, lest I should seem to accuse myself; they being brought in as a crime against me, and as instruments to condemn me.

Yet in general I acknowledge, that some 4 years since there were many strange and wonderful apparitions seen in my house. But what can these in justice amount to, though attested by oath, and confessed particularly by myself, when brought before those who profess themselves Christians, and acquainted with the history of the holy Scriptures? Pray was not Job

a pious, sincere, and eminent righteous man? Yet how was he scared with dreams, and terrified through visions! Chap. vii. ver. 14. Did not Zechariah the prophet (Zech. iii.) see Satan standing at the right-hand of Joshua to resist him? Did not John (Rev. xii.) in a vision behold a great red dragon, that made war against Michael and the holy angels? And was not Christ himself tempted of the devil by voice and visions? Matth. iv. 6, 8. Now the servant is not greater than the Lord, John xv. 20, and therefore not exempted from the like attempts of the devil. I beseech you consider, whether this earth be not the place where the devil walks up and down, seeking whom he may devour? How then can Bradfield, or any other place, be exempted from his appearing, when God permits? And may not all this be for the manifesting of his glory, goodness, and power? And who can tell whose family may be next exposed, by God's permission, to be tried and proved by the representations of Satan? And I desire you seriously to consider how any such apparitions, raised by the devil, and permitted by God for his own glory, argue me either scandalous, ignorant, or insufficient? Surely it rather argues that he hath blest me with a strong faith, in that he permitted such great trials, and made me instrumental to overcome them by prayer and fasting. If it can be proved that I ever so much as looked toward the unlawful art of black magic, or that any evil spirits were raised up by any compact of mine, explicate or implicate, or that those of evil apparitions were subdued and overcome by any other means than by God's blessing upon our fasting and prayers; I shall judge myself worthy of punishment. But otherwise it is hard measure to be prosecuted and prejudiced for the malice of the devil towards me, inflicting what I was passive in, and could not help; especially by those who profess the Christian Religion, and know that the God of heaven rules over all, permitting and disposing of whatever comes to pass.

*Art.* 14. That Mrs. Margaret Pendar doth think she was bewitched by them of Bradfield.

1 Part. *Ans.* Here is a long and tedious relation, in which truth and untruths are mixed together: the whole structure of which relation, so far as it concerns me, depends upon this weak basis and foundation, that she thinks she was bewitched by them of Bradfield. But what a sad thing is this, for my accuser to impeach me for that which might endanger, if true, my estate and life, upon the thoughts of a decomposed maid! Because she thinks I sent those visions, therefore I must be thus arraigned. But, for my part, I do not believe she dare say so, much less swear it, having no ground at all for it.

2 Part. *Ans.* I shall briefly relate some circumstances which concern this business, and may serve something to clear it up. Before these visions of hers, I had never seen her, as I know of, nor exchanged so much as a word with her. In the time of her visions, Mr. Daniel

Blagrove, whose servant then she was, came for me himself, to fetch me to his house to visit her.

To which motion I yielded, being suitable to the Law of Christian Charity. And when I came, I had no conference with her but in the presence of Master and Mistress Blagrove, with others that were then present. And from this visit, there arose a rumour that I was a Conjuror and a Sorcerer: Which report was spread abroad by two that carry the name of ministers of Christ, Mr. Fowler and Mr. Ford. The last of which so exceeded the bounds of charity and Christian moderation, as in his sermon, at the assizes, to call me a horrid blasphemer, asserting that the devil was as visibly familiar in my family as my own servants; and so excited the magistrates to persecute me.

3 Part. *Ans.* As for those untruths which are mixed in the relation, I shall not trouble myself to answer them; for I know when they come to be sworn to, and to be cross-examined, they will appear to be the fulfilling of that wicked maxim 'Calumniate audacter, aliquando hærebit;' calumniate and asperse boldly, something will stick. Which being a piece of jesuitical policy, hath been practised by my accuser in this confused rhapsody of Articles.

ARTICLES of one Francis Knight of Wallingford.

*Art. 1.* 'That some of Blewberry, who spake against marriage, said they came then from my house'

*Ans.* I hope I have enough to do to answer for myself; what need the assertions of others be alleged as Articles against me? They speak against marriage, having lately been at my house, therefore I must be guilty of it. Surely this consequence is neither according to natural, artificial, nor divine reason.

*Art. 2.* 'That my Chamber hath been filled with Spirits.'

*Ans.* I hope none will be so unadvised as as to swear to this Article, being spirits are immaterial, and cannot take up place, or fill a room.

*Art. 3.* 'That I preached that Water-Baptism was not an ordinance of Jesus Christ.'

*Ans.* It was never so preached by me. All that I then affirmed was this: That Water-Baptism could not be proved to be the Ordinance of Christ, by way of eminency so called, from that Text of Scripture, *Matth. xxviii. 19.* 'Go teach all Nations, baptizing them in the Name of the Father, Son, and Holy Ghost.' For that baptism may very well be understood of the Baptism of the Spirit; which by the Disciples was instrumentally administered to all converts. Yet I denied not Water-Baptism to be a Gospel Ordinance, instituted by John, as the chief instrument under God, from whom he received his Commission. And that this was the sum of what I then preached, I can prove by oath.

*Art. 4.* 'That about 1653, I was commanded by my Angel, or from heaven, to give off preaching, and to take no more tithes; but that since I have had a dispensation.'

*Ans.* I believe no one, that hath the fear

of God before his eyes, dare attest this Article by oath, which is here stated. This is answer enough to such a thing, which is merely brought in as an odium by my accuser the more to prejudice me.

*Art. 5.* 'That in July 1654, I was taken up into heaven, &c.'

*Ans.* If Paul were now upon the earth, he were in danger to be accused by my accuser, for his rapture into heaven or paradise. But this concerning me will prove but some idle dream, created by somebody's fancy to make people wonder at me.

*Art. 6.* 'That I cursed the people of Bradfield in my pulpit, and their posterity for ever, &c.'

*Ans.* This Article was one of those heard and examined four years since by the committee of Plundered Ministers, from which I was acquitted by them; these witnesses, viz. Richard Linton, John Hambleton, Mary Pocock, Richard Holmes, with four more, attesting by oath that I did not curse the people of Bradfield, so as is expressed in the Article. The testimony of these witnesses was this: That they being present Sept. 29, the Doctor expressed himself thus: 'Bradfield is a place partly made famous, partly infamous, by reason of the false and lying reports that are abroad: But I say, Cursed be the tongue and mouth that shall say, That what is done by the power of God, is done by the power of the devil.' What one parishioner is here cursed by me, except any one's conscience accuseth him of the guilt of that forementioned blasphemy?

*Art. 7.* 'Concerning the little horn mentioned Dan. vii. to be Christ.'

This Article was four years since exhibited against me, from which I was discharged by the committee; Richard Higs, John Higs, and Richard Linton, attesting on oath that I paraphrasing on the seventh of Daniel, and speaking on the little horn, said, That some interpreters would have the little horn in the letter to be meant of Antiochus Epiphanes, a bloody and persecuting tyrant; others think the little horn to be the Turk, who is a great persecuter of Christians: But in the mystery, in regard of its power, he will apply it to the power of Christ in a Christian, who is often in scripture resembled to the horn of David, and to the horn of salvation; and that upon three Considerations:

Consid. 1. In regard that Christ's power in the soul doth appear to be a little horn, a small despised instrument to sense and reason; for flesh and blood look on it as a poor instrument, in regard of bringing down the strength of sin in us.

Consid. 2. In regard of sin and Satan, who laughs the power of Christ in the soul to scorn, yet before him his accursed kingdom must fall.

Consid. 3. In regard its birth and beginning in the soul is at the first a very little grain of mustard-seed, yet in due time it will destroy the kingdom of sin, and set up the kingdom of holiness in us.

Having thus drawn away the veil from this Article, I hope it appears with a more tolerable and innocent face.

*Art. 8.* 'Concerning Goodwife Pocock's singing hymns and spiritual songs.'

*Ans.* She acknowledgeth it as her gift bestowed by God, being according to the gifts of christians in the primitive time. But this doth not directly concern me.

*Art. 9.* 'Concerning the same person's coming to colonel Evelyn's, and saying she had a word from God, viz. Have nothing to do with that just man.'

*Ans.* She owneth these words, and looks upon me as a just man, and a true christian; and believeth that colonel Evelyn will one day know she gave good counsel upon good grounds.

*Art. 10.* 'Concerning Mr. Snelling and his wife coming to my house, &c.'

*Ans.* This Article hath as little of truth as sense or force to prejudice me; and I believe none will be found to swear it: However, I think it not worthy of a larger answer.

*Art. 11, 12.* 'Concerning the sending of my man Bolt in an uncivil manner for Mr. Forster, with his speaking of strange things there to be seen, and of my telling Mr. Forster he should see very wonderful things, &c.'

1 Part. *Ans.* These Articles were heard, and I acquitted four years since by the Committee of Plundered Ministers, and are of so little consequence, that they might well have been omitted, but that my accuser thinks he hath never enough against me.

2 Part. *Ans.* I believe Mr. Forster dares not swear to these particulars, some of which are very untrue.

3 Part. *Ans.* The forementioned Robert Bolt asserted on oath that I sent him not with any message, but that it was his mistress that sent him to desire Mr. Forster and his wife to come to my house.

*Art. 13.* 'Concerning Goodwife Pocock's coming to Mr. Forster's, and saying, the Doctor had fought with and overcome an evil spirit; and that the family had been strangely acted, the power taking some of them in one part some in another; and that they spake glorious things.'

1 Part. *Ans.* This was another of the Articles heard, discussed, and I acquitted by the forementioned Committee, because nothing material could be made of it.

2 Part. *Ans.* The said Mary Pocock attested on oath she saw no apparitions in my house, being cross examined concerning that particular. And though she did say, God gave extraordinary power to sustain both our spirits and bodies in an extraordinary trial, what hurt was there in that? Why should it be brought as an Article against me?

*Art. 14.* 'That Mrs. Flavel was in a trance, and in it saw the philosopher's stone, which she knew to be the Divinity in the Humanity.'

*Ans.* Not to speak any thing concerning the mystical writings of the deep hermetic philosophers, or what the judgment of some of

them is, concerning this secret, I myself being not here accused to have seen it, or to have affirmed it was the Divinity in the Humanity; all that I shall answer is this, I wonder that this is brought in as an Article against me, to prove me scandalous, ignorant, or insufficient; it not directly proving any thing against me, being affirmed of another, and being one of those Articles I was discharged of by the Committee for Plundered Ministers.

*Art. 15.* 'Touching Seward's depositions of the birth of a child, and one being in travail.'

*Ans.* 1. This was one of the Articles of which I was acquitted by the forementioned Committee.

*Ans.* 2. Mrs. Elizabeth Pordage and Mary Pocock asserted on oath, that there was no woman in travail, nor any child born, nor any other cry heard, but of those at prayer; which was also witnessed on oath by Mr. Francis Pordage.

*Art. 16.* 'That in my house the New Jerusalem hath been seen to come down from Heaven, and that in it was a globe, in which globe was eternity, and in that eternity all the saints.'

*Ans.* As to the substance of this Article; if God hath favoured any with such a vision, surely they would be no more ashamed to own it, when called to it, than John was, when he wrote, Rev. xxi. 1. That he saw the holy city, New Jerusalem, come down from God out of heaven; where he also describes it by all the most precious stones in the creation. But in reference to my family, I believe none dare attest they heard this spoken by any of them, which I believe will prove but some groundless imagination.

*Art. 17.* 'That in my house God hath been seen face to face, &c.'

*Ans.* As this Article is stated, I shall give no other answer but this, that I shall wait to see who dare swear to it, or what proof can be brought of it.

Now I am come to the Articles exhibited against me by some of Bradford parish.

And as to those which concern Mrs. Flavel, I shall answer, 1. Somewhat in general touching their import and nature. 2. By way of negation. 3. By way of acknowledgment or affirmation.

*Ans.* Gen. This charge of Articles hath no legal reference of charge at all to me, but is merely scandalous, importing but a libel, nothing of fact really criminal being laid to my charge; which will more clearly appear, when the erroneous circumstances of it are detected: by which also the subtlety and envy of my adversaries will be discovered, who positively alledge nothing against me that may bear any action of damage at the common law, by which they might suffer for their injurious dealing; yet by plausible prevaricating circumstances would seem to make me highly criminal and guilty.

Now I shall answer negatively to many erroneous prejudicing circumstances, which are by



design heaped together, to put a plausible face upon an envious libel or illegal charge.

1 *Circ.* It is said, it was some eight years since I brought one Mrs. Flavel to Goodman Loader's, &c.

*Ans. neg.* Which is an error, though one of the smallest, brought in to prejudice the more, for it was some nine years since.

2 *Circ.* It is further said, this was carrying her to London.

*Ans. neg.* Which I deny; for it was coming from London, where she had for some time been.

3 *Circ.* That I asked whether my friend behind me, being sick, might have entertainment, &c.

*Ans. neg.* This I also deny; she was not then sick, neither did I use any such expressions.

4 *Circ.* That I never mentioned she was with child.

*Ans. neg.* Though I did not, it not concerning me to do it, yet she herself did not deny it.

5 *Circ.* That in a short time she fell in travail.

*Ans. neg.* A short time may seem to imply some few days, or weeks, being brought in as an aggravating circumstance; whereas it was some four or five months after.

6 *Circ.* That she had no husband then, as the world knew of.

*Ans. neg.* She owned then to the people where she was, and doth still, that she had had a second husband, which some in the world knew of very well, whose testimonies she can and will produce when she hath sufficient occasion offered by a legal call thereto: who is also able and ready to give a sufficient account, when occasion serves, of her not openly assuming her second husband's name, her estate then standing as it did; which having concealed for that time she was in law, she thought good ever since to be called by her first husband's name. But this subtle dealing of her adversaries by libelling scandals, without positively asserting she was not married, makes her incapable of recovering any damage of those who now enviously, yet indirectly, asperse her: which the commissioners ought to take notice of, who should not receive such libels, which tend to the blasting of one's credit and good name, which all sober Christians ought (for the gospel's sake) to value; and yet absolutely prove nothing of such criminal fact, which they design seemingly to prove, nor yet give sufficient ground of calling them to an account for such evil malicious scandals. But this not directly concerning me, I shall omit much which might be spoken of it.

7 *Circ.* That I came often to visit her.

*Ans.* This is not true: it was rather seldom, being but three times in three quarters of a year, and that in term-time, upon urgent occasions at law.

8 *Circ.* That I removed her to Kensington.

*Ans. neg.* This is false, for I knew not when she removed thither.

9 *Circ.* That I paid the smith for her being at his house.

*Ans. neg.* This is another untruth; I never paid him a penny, neither did I ever agree with him for her being there.

10 *Circ.* That the nurse's husband wrote a letter to me at Bradfield, for money for the child's nursing.

*Ans. neg.* This is a mere lye; for no such letter was wrote, neither did I ever agree to pay for the nursing of it, as the nurse and her husband can witness.

11 *Circ.* That shortly after he sent for the child away.

*Ans. neg.* This I also deny, it containing two untruths in it: for first, the child was not shortly after sent for away, neither did I send for it at all, for it was fetched away by the mother herself.

12 *Circ.* That a little while after the said little-one was brought into my family.

*Ans. neg.* This is also false.

13 *Circ.* As to the seventh Article of this libelling charge, in which many circumstances are produced to scandal the gentlewoman, as though she had told a great untruth; it deserves no other answer but this, that it is compacted of many lies, nothing being there true that really tends to prejudice her, as I believe will appear by the event.

Thus in this short relation, wherein there is some truth, pray take notice how many untruths and mere lies are mixed with it, to put a beautiful face upon an envious and unchristian design: And is not this to bear false witness against one's neighbour? May not any one's innocency and integrity be in this manner undeservedly clouded, aspersed, and wounded? Which I leave to the serious consideration of the judges.

As to my affirmative answer, what I acknowledge is this:

*Ans. Affirm.* About nine years since I brought behind me from London the fore-mentioned Mrs. Flavel, who had been of ancient and near acquaintance with me and my family, to one Goodman Loader's, a smith in Hessen, wheresome four or five months she was brought to bed of a daughter, which she owned to the people where she then was, to be by a second husband, even as she still acknowledgeth. And further, that I visited her three times in the space of three quarters of a year, at term-time, being then engaged in a law suit that concerned her; that one of those times I christened her child, and called it Hannah: that afterward her occasions not requiring so much privacy, she came to live with her ancient acquaintance at my house, where also for some years her daughter hath been with her.

Now to take away any thing that may seem to reflect upon me in this my acknowledgement, pray consider these subsequent particulars.

1. That I and Mrs. Pordage being of a very near and long acquaintance with her, it was but a friend's courtesy, for me upon her desire to carry her to this house behind me.

2. That she had sufficient ground to retire into some such place in the country : first, in that the city-air was offensive to her health; secondly, in that by the counsel of able lawyers she was advised to retire into some private place, she being then in law-engagements, and continually subject to arrests, by the entanglement of her first husband's estate; her brother-in-law, who was her adversary, then threatening to seize on her if she were above ground.

3. In reference to my engagement in her law business, I think it material briefly to relate the ground and occasion of it. In the time of her widowhood, her brother-in-law began a suit with her in the common law, which fearing he should there be overthrown, he removed to the chancery : now she being very unfit and incapable to manage this herself, she earnestly desired me, as an ancient and trusty friend, to undertake it. Upon this I went to judge Rolle and Mr. Chute with her, who looking into her evidences, and into the will of her late deceased husband, found that for want of one clause in it she was liable to many suits and arrests, and to great entanglements, and that her interest could not be established, but by much difficulty; and at length this was the result of the counsel, that she must let all her estate, which was under mortgage, be forfeited into the hand of some faithful friend, and so sell it away. Hence I through much importunity laid down some hundred pounds, rescued the mortgage, and so became interested in a suit at chancery, which lasted three years.

Now from this may further appear sufficient ground why I brought her to that private house : secondly, why I came to her in the time of her retirement, I then receiving money from her to follow her suit : thirdly, why I came alone, it being then her interest to be concealed, being subject to arrests.

I shall now proceed to add some few circumstances more, which may serve to clear me before all sober persons.

1. At my coming, I told the people my name, and that I dwelt at Reading, and that I was minister of St. Lawrence church, knowing the gentlewoman to be sober and pious. Now had I been as my enemies enviously pretend, I might have concealed my name, quality, and place of residence.

2. We discovered to them that the gentlewoman had an estate in the Bulwark at London, and rents there to receive, which they might enquire after, as they did, for their security : Now this was not the way to cover a work of darkness.

3. She sometimes went to London to the lawyers, whilst she was there, some belonging to that family accompanying her; who found, that as she had related, she was in great troubles at law, and were convinced that she returned on that account.

Now in reference to most of those particulars, in which I have contradicted, and denied the alleged circumstances, and further vindicated myself, they are exactly agreeing with what I have in writing confessed and acknowledged by Loader himself, from whom this Charge is pretended to be received, and by the nurse of the child, subscribed by them both before witnesses; which Acknowledgment I shall produce when I see occasion.

And by this I hope it may appear to moderate, sober, and judicious men, that this libelling Charge, drawn up so falsely, enviously, and yet so subtly, calling from the dead a business past some nine or ten years since; (which though it were criminal, as it is not, were invalid legally to prejudice, by the Act of Oblivion, or General Pardon, as all other things pretended to be spoken or acted by me before 1651, according to the judgment of judicious men, which I leave to the Commissioners to consider of) I say, that this is but the effect of the evil and wicked policy of my accuser, brought forth to prejudice and overcloud that pure and innocent principle, which I profess and faithfully live to; and the better to cover that evil design they have against my person and livelihood.

And now I appeal unto you the Commissioners, and to all that are pious and sober-minded, whether my enemies do not deal very unreasonably, enviously, and unbecomingly Christians, from this business, so long since past, in which nothing criminal is positively objected against me, to draw such horrid conclusions, as commonly to report that I now live in base lust and wantonness, notwithstanding my commending of and owning the virgin-life; I say, whether this be not exceeding hard measure, and ungodly dealing, let all judge. But I see the design of the Devil in it, which my enemies may be ignorant of, which is to overcloud and darken by monstrous lies and scandals, which are the smoke of the bottomless pit, that life of purity, chastity, mortification, self-denial, and heavenly enjoyment, which God hath favoured me to live in, and so to affright all from my acquaintance, which otherwise might very much prejudice and overthrow his kingdom. For the old serpent knows very well, as also my near friends and acquaintance, that for these four years, even since the time of my great trials, by the extraordinary temptations and representations of the Devil, that I have been abstracted more than ordinary from all outward things, giving myself up wholly to prayer, watchfulness, mortification, and constant self-denial, in dying to all earthly pleasures, even to things permitted and accounted lawful; as finding many things which ordinarily are embraced, to be great hindrances of the soul's progress to God, and great burthens to a spirit which hath tasted much of that tree of life which groweth in the midst of the paradise of God, and great clogs to a soul that sees through the veil of the sensitive nature into the spiritual glory of eternity. But what I have enjoyed and experimented, in this time of my extraordinary mortification and self-denial, in the death of the animal man, and rising

of Christ's image in me, is not seasonable now to declare; yet for the glory of my God and the undeceiving of those who strangely mistake me, this much in all humility I must say, that did my accuser, and my enemies, know what I have enjoyed in this way of the cross, of the secret hidden treasures of eternity, and of the out-goings of divine goodness; were they but acquainted with these discoveries of celestial glory, instillations of the heavenly dew, and secret touches of the Holy Ghost; did they but know those bright irradiations of eternal light, those strong motions of divine life, and pleasant streams of eternal love, together with those deep sufferings in bearing Christ's cross, which I and many in my family have in this time experienced; they durst not thus condemn me, and judge me as an evil-doer, and one that lives in the lusts of the flesh. But my God hath taught me to bless whilst they curse, to pray for them whilst they design to ruin me, and to love them whilst they hate me; and to say with Christ, 'Father forgive them, for they know not what they do.'

This I thought fit in all humility to annex to that libelling charge concerning Mrs. Flavel, from which I have undeservedly suffered so much, by the malice of the devil. And now I shall proceed to answer the remaining Articles, one of which is intermixed with the former seven that concern Mrs. Flavel, which is this:

*Artic.* 'That we have changed our names.'

*Ans.* It is well known that we own and subscribe our names in our civil converse with the world, as thus and my former Answers testify; I shall therefore wait to see, whether any one dare swear to this Article: and though we did in our own private family call one another by scripture-names, yet I conceive it did not concern the civil magistrate to take cognizance of such a thing, it being not practised to make any disturbance or confusion in the state.

*Artic.* 3. 'That I am extremely covetous, taking five shillings at a time to marry one.'

*Ans.* I wonder my accuser should let this Article pass, whose consequence is so much against reason, as to argue me extremely covetous for one such poor inconsiderable act done six or seven years since: and I appeal to the inhabitants of Reading, and Mr. Fowler's own conscience, whether he hath not taken ten shillings oftener than five for marrying.

*Artic.* 9. 'That my preaching doth not tend to edification.'

*Ans.* I can bring those that are knowing and spiritual, and sober Christians, who will assert that my preaching doth tend to edification, and to the building up of souls in the true knowledge and love of Christ; and I believe these my accusers will be found to be like those of Chorazin and Bethsaida, of whom Christ said that "if the mighty works which were done amongst them had been done in Sodom and Gomorrah, they had repented long since in dust and ashes." And was Christ's

ministry ineffectual, because they did not believe, but remained in the hardness and impenitency of their hearts? Neither doth it follow that my preaching doth not tend to edification, because those that bring this Article, through their unbelief, are not edified by it: for there are many, that come from places round about, that are edified, strengthened, and refreshed, by it; and that there are many that have been enlightened, convicted, and converted by it, who still receive quickening growth and comfort under it, confessing that God is in it of a truth, as fiding it instrumentally effectual to the pulling down of the kingdom of sin and Satan, and to the erecting the kingdom of Christ in their hearts; for which I bless God, and praise his grace, by which it is what it is.

*Art.* 10. 'That I am very ignorant and insufficient for the work of the ministry.'

*Ans.* I believe those that exhibit this Article against me, upon trial will be found very ignorant and insufficient to judge of it; and as to those that are to be my judges, I hope they will not make their own wills the rule of ignorance and insufficiency, but proceed according to the canons of pure reason, or supernatural revelation, in giving judgment concerning this particular: the event of which I leave to God.

Now to conclude: Though in reference to this, and the two last Charges of Articles, I stand free from any guilt in the sight of God, and I hope, by my Answers to them, in the sight of all judicious and sober men: yet to leave any unexcusable that may design, whether by law, or without law, absolutely to condemn me; I crave the benefit and privilege of the Act of General Pardon in reference to all those things that are pretended to be spoken or acted by me before the year 1651, as most of these are, that seem to be of any moment and consequence.

JOHN FORDAGE.

After this was read, not knowing but that the commissioners retained their former resolution of examining their witnesses in private, I pressed them to an open examination, for the satisfaction of all parties, and for the more full discovery of the truth; alledging, that I hoped they would not deal worse with me than the Jews did with Christ, and the ethnic Romans with Paul, who suffered them to hear their accusers face to face. So after some dispute it was granted, and agreed upon.

But before I proceed to give you an account of the Depositions taken *pro* and *con*, I must inform you, that the 22nd of November was the time of my fourth appearance, which continued three days; all which three days were wholly spent in taking the Depositions of my accusers witnesses, to make good the first and last Charge: And when they had ended their examinations on the 24th being Friday, late at night, they called upon me to produce my witnesses, if I had any. I answered them, I had witnesses, but they were not then present, neither had I received any summons for their appearance; whereupon I desired a summons

to call in my witnesses, which they, after much debate, and many outcries against me for not having them ready, granted; together with an Order by which I was to appear at the Bar in Speenhamland at Newbury the 30th of that month, which was just a week after, to make proof of my Defence by witnesses. I seeing they had prescribed so short a time for making my Defence, alleged that it was impossible for me to be ready with my witnesses so soon, and desired a fortnight's time: which though I urged it with many reasons, could not be granted me.

But I was afterwards prevented by a vehement cold, in reference to my appearing at Newbury on the day prescribed: whereupon I sent three friends to attest my inability to appear on that day before them; who likewise presented the commissioners with a letter from me, in which I gave them an account of my great distemper. Whereupon the truth of my extraordinary weakness being attested by those I sent, this Order with a new Summons was granted by the commissioners:

*Berks.* By the Commissioners for ejecting of Scandalous Ministers, November 30, 1654.

"Whereas Dr. Portage was required this day to appear before us in the case depending concerning him; and it is now attested that the said Doctor is sick, and cannot, without further danger of his health, this day appear: It is therefore ordered, that he shall have further day given till the seventh of December next, at the Bar in Reading; which day is to be peremptory unto him."

According to which Order I appeared at Reading the seventh of December, with my witnesses; where two days were spent in examination, (now this was my fifth and last time of appearance) the transactions of which cannot distinctly be set down by themselves, in regard of my joining the Depositions then taken, with those of the adverse party, according to the subsequent method.

Now then I shall proceed to the merits of the cause, *secundum allegata et probata*.

Here then I must present you with the Depositions of the Witnesses, and first with those that concern the first Charge of Articles; in reference to which, Mr. Tickle gave evidence by oath against me, first at Newbury the fifth of October, and again at Reading the 22d of November, being the day in which my Answer was read.

Now to the first Article:

*John Tickle*, minister of Abingdon, sworn at Newbury the fifth of October, deposed, That I delivered in the pulpit, That the fiery deity of Christ mangleth and unweeth itself with our flesh.

On farther examination upon oath at Reading, November 2, Mr. Tickle affirmed, That he charged blasphemy on the former expression, and that I repeated my sense to be thus, viz. That I did not mean with our corruption, but

with our flesh; holding my hand over the pulpit.

The said Mr. Tickle being cross-examined touching this Article, upon this interrogatory, viz. Whether he did swear positively to this Article, as thus delivered by me in the very same terms, and order, without any addition or diminution; or only so, according to his best remembrance; thus replied, That the sum and substance of that Article was clearly and fully delivered by me, and as far as he could remember in these words, or words to that purpose.

The same person being sworn again, and further examined at the Bar in Reading, November 2, after some expostulation with me, in which he grew somewhat passionate, further said, That after I had held up my hand, as he had formerly deposed, I said I did not mean our flesh, but with the soul of Christ; and that this was delivered without any the least limitation as to the sense of it.

Now these last depositions were taken by the Court from Mr. Tickle occasionally, (after he had answered the cross-interrogatories by writing) when Mr. Tickle was sometimes raised into seeming passion against me, from accidental discourses that fell in upon examination.

But I shall here discover my own meaning, and bring in the intended evidence of my witnesses in reference to this Article. My meaning then (notwithstanding Mr. Tickle's rash allegations) was this; by flesh I meant the pure regenerated part of the soul, with which the spirit of Christ is united, according to that of the Apostle, Eph. v. 30. For we are members of his body, of his flesh, &c.

My evidence was this, there were present three witnesses, viz. Mr. Francis Portage minister, Mrs. Mary Pocock, and one Robert Bolt, who offered to attest upon oath, That they being present at the Committee of Plundered Ministers, about March 27, 1651, heard me upon the interpretation of this Article, 'That the fiery deity of Christ mangles itself with our flesh,' explain myself thus; That by flesh I understand not the sinful and fleshly part of the soul, that lusteth against the spirit, for in this there can be no union, for these are contrary; neither by flesh did I understand the outward elementish flesh of the body, but by flesh I understood the pure regenerated part of the soul.

But this testimony they rejected, and would not receive it as evidence, denying to examine the witnesses, in regard they were not present at Hley, where Mr. Tickle alleged this was spoken. But I believe the judicious reader will find this testimony to be more pertinent to the clearing of the truth, in reference to my sense in the former proposition, than what Mr. Tickle hath uncertainly, according to his best remembrance, asserted.

To the second Article:

Mr. Tickle saith, That I delivered, 'That the imputative righteousness of Christ is a sapless righteousness.'

And being further examined by interrogatories, he answered to the first of them, That this was fully and roundly delivered in my sermon at Hsley.

But to the second interrogatory, which was thus, Whether it was with a limitation, or without? he thus answers, That he doth not remember any addition therein, unless it were in opposition to the righteousness, which (as he said) <sup>he</sup> called sapless.

Being further examined, Nov. 22, the same deponent said, That I did not deliver any such limitation, as I made in my answer thereunto, and that there was no such word as *except* spoken, nor any thing like it.

Roger Stevens, sworn to the same Article deposed, That I delivered in a sermon at Hsley, 'That the righteousness of Christ was a *sapless righteousness.*'

And that he doth not remember any thing to the contrary, but that the same was an entisentence, and only so. And that to his apprehension the drift of my sermon was to take away the strength and efficacy of the righteousness of Christ.

And this deponent further said, That in the aforesaid sermon at Hsley I delivered these words, 'That you are not to look to this, (meaning, as the deponent apprehended, Christ's righteousness) but to the fiery deity burning in the centre of our souls, consuming and destroying sin there.' Which said word, did not immediately follow the words that I used, when I said the righteousness of Christ was sapless, but the same were further off in my sermon, to his best remembrance.

Now I shall present the Depositions of my own Witnesses touching the second Article.

Mrs. Mary Pocock being sworn and examined December 7, was asked by me whether she heard me deliver the second Article at the Sermon at Hsley, viz. 'That the imputative righteousness of Christ was sapless;' she replied, she was then present at the sermon, and did hear these words delivered. Then being further asked, Whether delivered with a limitation, or without a limitation? she answered, That it was with a limitation. Then she was further asked, What that limitation was? she re-answered, That it was with this limitation, 'except the fiery Deity of Christ be in the centre of our souls, burning up our lusts and corruptions.' And being further asked, Whether these last words were spoken together with the other words, to make up one sentence? she said, Yes, in these express words, viz. 'That the righteousness of Christ was sapless, except the fiery Deity of Christ be in the centre of our souls, burning up our lusts and corruptions.'

After this I brought three witnesses more to be sworn touching this Article.

Their evidence was this, which every one in particular intended to give in, in writing, after this manner, viz. I do confess I was present before the Committee of Pliandered Ministers, the 27th of March, 1651; where I did hear the

'Doctor, upon his examination touching that Article, 'That the imputative righteousness of Christ is a sapless righteousness,' deliver himself to this purpose; That to him that hath not the spirit of Christ indwelling in his heart by faith, notwithstanding all his application of Christ and his merits, it is but a sapless righteousness: So saith the Scripture. He that hath not the spirit of Christ is none of his

'But this testimony and evidence the Commissioners rejected, and would not suffer the witnesses to depose it upon oath.

'In the next place, I certified the Commissioners, that I had present divers knowing Christians that were constant hearers of me, who were ready to depose on oath what the scope of my ministry was, and what they had frequently heard me hold forth in it, touching Christ's imputative righteousness.'

But the Commissioners rejected this testimony also, and would not hear the evidence of these intended witnesses; saying, that it was not to the purpose, but merely dilatory. To which I replied, That although the proofs were weak and altogether unperemptory, yet being Judges, they ought to hear them, and afterwards to judge of their force or invalidity: and I further told them, That this proceeding of theirs, in thus preventing and rejecting the testimony of my witnesses, in not suffering them to depose what they could, did much strengthen my belief of the common report spread abroad the country, That they had resolved before-hand to condemn and reject me, whether by right or wrong. At this Mr. Trepahan's choler seemed much to be stirred, that the Court, of which he was one, should thus be charged: saying with much asson, That this should be looked upon as a contempt and an affront against the Court.

But the Commissioners peremptorily resolving not to take the evidence of the forementioned witnesses, because it contradicted not Mr. Tickle's testimony, *quoad idem tempus*, in reference to the same particular time; I was forced to tell them, that I must be subject to the examinations of the Court: but I hoped I would be more ingenuous and Christian-like, than condemn me for a word or expression, though proved ever so clearly, if the drift and tenour of my ministry were otherwise.

But I shall here insert, and so leave it to the judgment of the reader, what eight substantial witnesses, who almost constantly hear me, would willingly have deposed upon oath, touching this article, viz. That the scope of my ministry is not to take away the due application of Christ's righteousness, but the misapplying of it in reference to those who have no interest in it.

After this, I further pressing the Commissioners to hear those witnesses which were to attest this, they seemed somewhat to change their resolution, and to admit one or two of them to be examined. So I mentioned Mrs. Mary Pocock, a very pious and experienced

Christian, and so known to be in the place where she lives. Against whom it was objected, that she was one of my own tribe. Then I mentioned another discreet prudent Christian, by name Richard Higgs, who is known to be one of a very good conversation. Against whom Mr. Fowler having somewhat to object for his supposed Judgment, was willing to have him called to examination.

So this Richard Higgs being sworn, deposed, That he had been a hearer of me at certain times for five or six years last past; and that during that time, for ought the deponent knew, the scope of my ministry hath not been against the right and due application of Christ's righteousness, but against the misapplication thereof, for ought he knew or ever understood. And being asked, Whether he had been a constant hearer of me? he said, he had heard me very often, but that he was usually at his own parish in the morning, and that sometimes he was absent, but had often heard me.

And being further asked, What he had usually heard me preach concerning the imputative righteousness of Christ, he said, he could not charge his own memory; but had a note to which he would reflect, for recollecting his memory; and thereupon produced a note, which he confessed was given him from the Doctor.

[Here, upon this, were many outcries against me, from the accuser, and others of the ministers and Commissioners, as though I had committed some heinous act in suborning a witness to swear what I pleased: whereas there was no such thing; for this man and two more, meeting at my house, compared their notebooks together, out of which this was taken, which was in that paper, which he after mature deliberation, and reflection upon it, could with a good conscience swear to; as looking upon it more safe, than to swear upon sudden memory.]

But I shall now proceed to the further examination of this witness, as it was taken by the clerk, but very partially, as you shall see presently.

This Richard Higgs being asked, what he meant, or what the Doctor meant by the righteousness of Christ? he saith he cannot depose; but the Doctor interposing, said, Christ's righteousness was his active and passive obedience. And thereupon the deponent being asked, what was Christ's active obedience? presently denied his words again.

To this he refused to subscribe.

The clerk hath left out something touching Richard Higgs's answer to that question about Christ's active obedience; which answer being caught up by the clerk, before he had liberty to express his meaning, he might very well deny, though the clerk had wrote it down, it being not according to his meaning and purpose; and so not fit to be subscribed.

After this, Mr. Fowler, the accuser, openly attested against this deponent, that he denied

the Bible to be the word of God, and said, that the same was but old declaratives; which the said deponent denies.

Here the clerk's partiality is again apparent, who left out a weighty distinction which the deponent made, concerning the word of God, in answer to Mr. Fowler's accusation, which was this; that he never denied the Scripture or Bible to be the written word; but had said, it was not the essential word: And this very distinction the deponent had formerly given to the minister of the parish, who being present confessed it before the court, acknowledging that he walked like an honest and sober Christian in his conversation.

But to proceed: Although this deponent's written evidence would not be received, yet I shall here present it as it was to be given in, and attested by seven more witnesses besides himself. The form of it was this; I confess I have heard the Doctor preach at Bradfield about the year 49, out of Dan. ix. 24, thus: *Quest.* What is meant here by this righteousness? *Answer.* By this righteousness is meant Christ's righteousness, Jer. xxiii. 6. 'The Lord our Righteousness.' And Paul desireth 'not to be found in his own righteousness,' but in the righteousness of Christ, Phil. iii. 9. 'Christ's righteousness is the soul's wedding-robe;' Isa. vi. 10. 'He hath covered me with the robe of righteousness.' As to the nature of Christ's righteousness, it is a pure, spotless, perfect and complete righteousness, Eph. v. 27. 'That he might present to himself a glorious church, in this righteousness of his not having spot or wrinkle.'

This which follows was also intended to be given in, and was to be attested by three witnesses: I confess, I heard the Doctor preach in Bradfield church, out of Luke i. 68. That the free grace of God the Father is the first cause of the soul's justification.

*Quest.* What is the matter out of which a sinner cometh to be justified in the sight of God? *Answer.* It is righteousness. As a man cannot live without a life, so a Christian cannot be just without righteousness; and this righteousness is called Christ's righteousness; no other righteousness, but the righteousness of Christ, can justify the soul. Therefore he is styled, Jer. xxiii. 6, 'The Lord our righteousness.' 1 Cor. i. 30. 'Christ is made unto us wisdom and righteousness;' that is, for our justification. This righteousness of Christ, in its own nature, is an everlasting righteousness, Dan. ix. 24. 2 Cor. v. 21. 'That we might be made the righteousness of God, in being clothed upon with Christ's righteousness.' Phil. iii. 9. We are not to be found in our own self pharisaical righteousness, but in Christ's righteousness, which is the righteousness of justification. And the formal cause of a sinner's justification, is his union and communion with this righteousness of Christ, through faith and believing on it; Rom. x. 6. 'The righteousness

‘ of faith speaketh on this wise, &c. that is, the righteousness of Christ apprehended by faith.

‘ This was also intended to have been given into the court in writing, being transcribed out of three or four note-books compared together, and afterward seriously considered and weighed; to which the witnesses could swear with good consciences, notwithstanding all those outcries were against this evidence by some of the ministers and commissioners, as though I had prescribed what they should swear; and that we were all combined to commit a heinous sin, and bring the guilt of perjury upon ourselves: whereas we all stood in innocency as to this thing, having no other end in it, but the stable assurance of the truth of what was to be attested by serious reflections upon it, after the comparing of divers note-books together, which served to help and strengthen the memory of the witnesses; together with the avoiding of the clerk’s prevarications in writing, by partially taking the depositions, in which we often found him defective.

‘ But to conclude this Article, I have produced these testimonies to shew my judgment touching Christ’s righteousness, which (with the positive deposition of Mrs. Mary Pocock, that I spake that of the imputative righteousness of Christ with a limitation) may in justice outweigh the depositions of the other two witnesses against me, being neither of them are positive, and so not effectual in law or reason.’

Now I shall pass to the third Article;

To which Mr. Tickle being sworn, saith, that I delivered, that the discoveries of the sinfulness of sin, the terrors of the law, the death of Christ, the free grace of God, are fleshly and flashy discoveries.

Afterward being cross-examined by me to this interrogatory, whether this Article was delivered in the same express words, and in the same order? He answered thus:

That the very sum and substance of this Article was delivered fully and roundly by me, and in the express words for the substance of them, and to the best of his remembrance.

‘ Now I not remembering that ever I said that these were but fleshly and flashy discoveries, and knowing that it was but his single testimony, and not positively sworn to, and so no legal evidence to condemn; and besides, that it was not comprehended in the act of blasphemous opinions, to which the ordinance refers: I passed it by formerly without any answer. But now to satisfy knowing Christians concerning my judgment in this particular, I shall here present this answer; that I then held forth, and do still own it, that the discoveries of the sinfulness of sin, the terrors of the law, the free grace of God, the death of Christ, were but preparatory works under the Father’s dispensation, to the higher and more powerful workings of God under the dispensation of the Son, in changing and transforming

‘ the heart into his Image; and so but weak in comparison of the more full and clear manifestations and operations of God upon the soul, in bringing it up into divine union and fruition.’

To the fourth Article;

Tickle saith, that I delivered, that the liberty and freedom spoken of, purchased by the blood of Christ, is not a liberty and freedom from the guilt of sin, the curse of the law, the wrath of God, but the fiery deity of Christ in the center of our souls.

Tickle being further examined on this Article by me, to this interrogatory, viz. Whether this was delivered first in the same express words? Secondly, and in the same order? Answers:

First, the very sum and substance of this Article was delivered fully and roundly by the Doctor. Secondly, that it was delivered in the express words, for the substance of them.

To a third interrogatory proposed by me, viz. Whether this Article was thus expressed by me, without any addition of diminution of his own? He thus answers; to the best of his remembrance, without any limitation, addition or diminution of his own.

‘ But here, courteous reader, you must give me leave to shew you Mr. Tickle’s uncertainty and disagreement with himself in delivering this Article, which cannot but make it invalid in the eyes of the — that are judicious.

‘ In his uttering of this Article three several times, he never agreed with himself, but either diminished or added. The first time he swore to this Article, he had this clause (and apply by the clinging and cleaving of the soul to Christ) as you may see in the first paper of Articles, when, being sworn again Octob. 5, he left it out; and neither of these agreed with his own deposition given under his own hand some four years since, to the Committee of Plundered Ministers, when it was more fresh in his memory, and yet not delivered so fully and positively as now; which you may see by his own words (taken out of his former depositions) which were these.

‘ Another preparation was the instating of the soul into a glorious liberty and freedom, in these expressions: which liberty and freedom is not that liberty and freedom from the guilt of sin, the curse of the law, the wrath of God, brought about (or in an expression of the same signification) by the death and blood of another; and applied (or a word like it) by the clinging and cleaving of the soul to Christ.

‘ Now you may take notice, that in the two former, this clause was added, viz. ‘ But the fiery deity of Christ in the center of the soul,’ which here is not mentioned. Moreover the order is changed, and some doubtful expressions are inserted; which shewed his uncertainty four years since. All which compared with that answer of his, given by oath at my late trial, that this Article was delivered in the same express words, for the substance of them,

'cannot but shew that he hath almost, if not altogether, incurred the sin of perjury. Now, all this being well weighed, cannot but demonstrate that this testimony is of no force at all.

'And although I formerly gave no answer to this Article, because it was not sworn to positively, but with reserves and alterations, and that by one witness only, and came not under the act of scandalous opinion, yet I shall now speak something to it, and shew you the deponent's mistake, which was in leaving out this word (only) which inserted, makes it appear with a more innocent face.

'But now I shall further answer, that I delivered this sentence thus, which I still own, viz. That the second preparatory work that Christ did in the soul of a true saint, for the manifesting of his glory in it, was the instating of the soul into a glorious liberty and freedom, which doth not only consist in the liberty and freedom from the guilt of sin, the curse of the law, the wrath of God; but also in the enjoying of the spirit of Christ in the center of the soul, there purifying our natures, mortifying our lusts, and restoring us into the image of God. And so this, truly represented, is a glorious truth; though as Mr. Tickle by mistake delivered it, it seemed monstrous.'

To the fifth Article.

*Tickle* saith, that I did deliver, that by male and female, Gen. 1, we are to understand by male, the Deity; and by female, the Humanity; and that these two became one flesh. These things were delivered without any limitations whatsoever.

*Tickle* being further examined on this Article, viz. Whether I spake this as my own avowed judgment, or as the judgment of some other person? Answers thus: that I delivered those expressions of the Article with approbation, and that therefore he had cause to believe it was my judgment; and, as far as he remembers, it was delivered as my judgment.

'Here the reader may observe, that Mr. *Tickle* doth not answer directly and nakedly as a Christian should, but subtly and indirectly, like a sophister; for he answers, that I delivered this with approbation: but whether this approbation was from myself, or from some other (I might then cite) he doth not express, passing it over in silence. Afterwards he saith, he hath cause to believe it was my judgment; which is a mere prevarication, but no answer to the question; which was not, whether he believed it to be my judgment, but whether I delivered it as my judgment, or as the judgment of another? To which in the last clause he answers somewhat, viz. That I delivered it as my own, as far as he remembers. But though this be somewhat to the question, yet not much to the purpose, it being no legal proof or evidence; for his memory might fail him.

'Now the reason of this interrogatory was, in that Mr. *Tickle*, some four years since, when this was better in his memory, than

'now it can be, gave in this that followeth, under his own hand, to the Committee of Plundered Ministers, viz. That Gen. 1. by male, we are to understand, saith Mr. *Pordage*, the Deity; by the female, the humanity. This he gave from a Rabbi, with that approbation.

'Now how consistent this is with his late answer, to my interrogatories, let all judge; especially with that part of it in which he affirms, that as far as he remembers, I delivered it as my own judgment.

'But now to answer something positively to this, which may give satisfaction to judicious and knowing Christians, I acknowledge that, in the sermon before-mentioned, I delivered for substance, this which follows, viz.

'That another preparatory work that Christ did in the soul of a true Christian for the manifesting of his own glory in it, was the bringing up the spirit of the soul into a glorious, mystical, yet real union with himself: And after I had proved the truth and substantiality of this union betwixt Christ and a Christian, from several texts of scripture, which directly evinced it; I came by way of illustration to speak of that scripture, Gen. 1. out of which I said, that by male and female, according to the judgment of a learned Rabbi, the Deity and pure humanity might be shadowed forth, which by union become one; the male representing the Deity, the female the pure humanity, or regenerated part of the soul, which by union is made partaker of the divine nature.

'By this you may see, that if Mr. *Tickle* had been but a charitable and knowing Christian, he need not have troubled himself and me about this Article.'

To the sixth Article;

'Mr. *Tickle* saith, that he heard me deliver in discourse with Mr. *Pendarvis*, that the gifts and graces of the spirit were but flesh.

Being further examined, he said, That this sixth Article, there was no limitation whatsoever in the delivering of it.

'Here the reader must know that Mr. *Pendarvis* was summoned by me to witness to the truth in this particular, but he came not; alledging that he could say no more than what he had already deposed. Whereupon I desired the Commissioners (after information that I had summoned him) to hear his former deposition read; but they peremptorily denied it. By which I clearly saw that they had more mind to take all occasion of advantage against me, than to be fully informed of the truth of things.

'But Mr. *Pendarvis*'s deposition given in before the Committee of Plundered Ministers, was this, viz. That the Doctor, in conference did say, That the gifts and graces of the spirit were but flesh; and I opposed him: but then the Doctor replied, by way of explanation, that he understood them only to be flesh; that is weak in point of rest and trust on them



‘for eternal life and salvation : and in this I agreed with him.

‘Correspondent to this, was my answer to, and explanation of this Article before the Committee of Plundered Ministers, which three witnesses were ready to depose on oath before the present Commissioners, who refused to hear their testimony.’

To the seventh Article ;

Mr. *Tickle* saith, That he heard me deliver in discourse, That Christ is a Type and but a Type.

Being further examined he saith, That I endeavoured to prove that Christ was but a Type, out of Peter, where he is called *typus*.

Further, Roger Stephens being sworn to this Article, deposeth, That the Doctor, in dispute with Mr. Pendarvis, delivered, That Christ was but a Type, and went to prove it by the scripture, 1 Pet. 2. ‘He is our example,’ To which Mr. Pendarvis replied, That is not meant by way of righteousness, to justification, but by way of example, as to reproaches. To which the Doctor answered, You understand it one way, and I another ; or words to that effect.

Now to balance these depositions, the reader must take notice,

‘1. That my true sense of this Article, may be seen in my answer to this first charge, in which I have truly shewed in what sense I owned Christ to be a Type, viz. as he is a pattern and example for us to imitate and follow.

‘That this discourse being with Mr. Pendarvis, it is requisite I should here insert his deposition taken by the justices of peace of this county and afterward presented to the Committee of Plundered Ministers ; which was as follows :

‘This Examinant (which was Mr. Pendarvis) further saith, That the said Dr. Pordage, in a conference had with him at the same time, after his sermon at Isley, said, That Christ was a Type and but a Type : but this expression was immediately waived by him, but he constantly affirmed that Christ was a Type.

‘But, because Mr. Pendarvis could not be there to witness  *viva voce*, the Commissioners would not admit his evidencer.’

But Mrs. Mary Pocock being sworn and examined on this Article, saith, That she heard the Doctor maintain in that discourse with Mr. Pendarvis, that Christ was a Type, and proved it out of Peter ‘He was an example,’ and that she heard the Doctor say, he would not stand to the word ‘But.’

And further, John Pordage, son to the Doctor, aged between 19 and 20 years, and examined December the 7th ; this deponent saith, That in dispute between the Doctor and Mr. Pendarvis, about five or six years since, about Christ’s being a Type, the Doctor said, that Christ was but a Type. To which Mr. Pendarvis asked, Do you say but a Type ? Whereupon the Doctor answered, he did not stand to the expression, ‘but a Type ;’ it was but the slip of his tongue, but he maintained that Christ was a Type.

‘You see here are three witnesses that attest I never owned or stood to that of Christ’s being but a Type.’

Correspondent to which testimony, I gave in my answer before the Committee of Plundered Ministers which I offered to prove by three witnesses then present, who heard me, who were ready to attest this which follows, viz.

‘That they being present (about the 27th of March 1651,) before the Committee of Plundered Ministers, heard me touching this Article “That Christ was a Type, and but a Type,” deliver myself thus ; That I had owned Christ to be a Type, that is, a pattern and example for us Christians to square our lives and conversations by ; but that I had not owned him to be but a Type, or a Type only ; but the Commissioners would by no means hear this evidence.

‘After this I earnestly pressed them to hear what my witnesses could further say, touching what I had publicly delivered in my ministry about this subject ; telling them that such evidence was in justice more to be respected, than a mistake in sudden speaking, presently retracted ; but they denied all such evidence, and would not hear ; which clearly shew’d their partiality, and that they little regarded what my avowed judgment was.

‘Notwithstanding, I shall here insert what some were ready to witness, in reference to this Article, who had been constant hearers of me ; whose testimony was this : We confess we have heard the Doctor preach out of Luke 1. 68. First, this by way of doctrine, viz. That God’s free grace is the first and chief cause of our redemption. Then he proceeded thus : That the inward man was redeemed in, for, and through Christ, Rom. iii. 24, ‘through the redemption that is in Jesus Christ.’ How through Christ? *Answer*, Through Christ’s death and passion ; Isai. liii. 5. ‘He was wounded for our transgressions, he was broken for our iniquities.’ 1 Pet. ii. 24. ‘Who bare our sins in his own body on the cross.’ Rom. iv. 25. ‘Who was delivered for our offences to the death of the cross.’ 1 Cor. v. 7. ‘Christ our passover is sacrificed for us.’

‘Now this clearly shews, that Christ is more than a Type, and that he is a complete Redeemer.’—So much for this Article.

To the Eighth and Ninth Articles ;

Mr. *Tickle* saith, That he heard me deliver before the Committee of this county, sitting at Reading, That Christ was not God ; and that he was not Jehovah.

Being further examined to this Article, my interrogatories to him were these :

1. Whether these words were not expressed in a hot dispute before the Committee ? To this Mr. *Tickle* replied, That I endeavoured in dispute with great seriousness before the Committee, to maintain, That Christ was not God, that Christ was not Jehovah.

My second question was this, Whether, in the same dispute, this Article was not limited and explained by me ?

‘But this question was wholly waved and passed over in silence; but whether voluntarily by Mr. Tickle, or by the clerk’s deceit, the interrogatories being given in writing, I do not know; but this I am sure, it was much to the prejudicing of my cause to let such a weighty question pass without an answer.’

3. Whether this Article was held forth by me as my avowed judgment?

*Ans.* To this he thus answers: The Doctor did maintain and defend this Article as his avowed judgment.

‘Here Mr. Tickle is very peremptory in a rash answer, though that interrogatory before could be slid over in silence; the answer to which, if Mr. Tickle had not easily incurred perjury, would have much cleared the truth, in regard I meant and explained myself, of God the Father, as you shall see afterward.’

This deponent, Mr. Tickle, further deposeth to the eighth and ninth Articles, That there was no such expression, of the Father, used in the definition of blasphemy, as is mentioned in the Doctor’s Answer; but saith that the definition was, That blasphemy was an evil-speaking against God, derogating from his glory, either in his name, nature, word or works. Mr. Tickle further affirms, that my immediate words thereupon were, Hark! he answereth, blasphemy is an evil-speaking against God; and in his paper chargeth me with blasphemy against Christ, as if Christ were God: and hereupon we began a hot dispute about the Godhead of Christ.

‘The reader must here know, that upon Mr. Tickle’s defining blasphemy to be an evil-speaking against God the Father, as I then really apprehended, I immediately cried out, Hark! he defineth blasphemy to be an evil-speaking against God the Father, and in his paper chargeth me with blasphemy against Christ, who is God the Son. Whereupon began a dispute; in reference to which Mr. Tickle further deposeth,’

That he asked the Doctor if Christ were God: who did deny it, and put the deponent upon proof of the same. Whereupon he cited that scripture, ‘In the beginning was the word,’ &c. To which the Doctor replied, He is called God, but he is not Jehovah. To which the deponent replied, He is Jehovah; which the Doctor likewise put him upon proof of. To which he answered that Scripture, ‘His name shall be called Jehovah, our righteousness:’ and, as he remembers, the Doctor did disallow of that proof, as being out of the Old Testament; to which he cited that scripture, ‘He that was; is, and is to come,’ as of the same purpoe with Jehovah.

‘Tis well that Mr. Tickle adds, according to his best remembrance, which saves him from perjury: for I esteem the Old Testament to be Scripture as well as the New; neither did I disallow of that proof as being taken thence, as he would insinuate: but I said that Jehovah in the Old Testament most commonly signified the person of the Father.’

But now we shall pass to the next witness.

*Thomas Traphum*, one of the Commissioners, sworn and examined, deposeth; That, to his remembrance, the word Father was not in Mr. Tickle’s definition of blasphemy; and that the Doctor did then deny Christ to be God; which the deponent did acquaint Mr. Blagrove with. To which Mr. Blagrove said, If he say Christ is not God, we must take further course with him. To which the Doctor replied, Christ is not Jehovah: and that when Mr. Tickle had confuted him in that argument, (I must now tell the whole truth) the Doctor replied, He was not God the Father.

‘Note, This was rather a confutation of Mr. Tickle’s own apprehensions concerning me, than of my meaning in what I then spake: and if he swears truly that the term Father was not in his definition, then as he mistook me, I mistook him; upon which mistakes his needless proofs were grounded.’

But now to the next.

*Mr. Roger Stevens*, of Reading, sworn and examined, November 22, deposeth, That the Doctor did confess in the deponent’s hearing, in a sermon, That Christ was not Jehovah.

‘Note, Before I proceed any further, I cannot but desire all sober Christians to take notice what a bitter and envious spirit this deponent is of; which will appear by what follows.’

After his before-expressed depositions, I put these interrogatories to him: 1. Where did you hear me preach this? To this he replied, In a sermon at St. Lawrence’s church. 2. I asked him before whom? He answered, Before the Committee of Berks. 3. I demanded of him how I explained myself, when in the sermon I affirmed openly, That Christ was not Jehovah? He replied, he did indeed explain himself thus, That he had said that Christ was not Jehovah, in opposition to the Father.

‘Note, Here the reader must know that this sermon was delivered at Reading by the appointment of the Committee, (before which we had the dispute about the Godhead of Christ) in which sermon I openly cleared myself from that usual aspersion of denying the Godhead of Christ; which so satisfied the Committee, that upon this they judged me innocent in that particular, and by vote cleared me. And now considering the scope of my sermon at that time, together with the deponent’s deposition, viz. That he heard me in a sermon confess that Christ was not Jehovah, without adding any more to shew how I said it, till I cross-examined him: I say, weighing these well together, the judicious reader cannot but see this deponent’s envy and partiality, and unfitness to take oath, or be much regarded after oath; who swearing to speak all the truth, dares yet take one sentence out of a whole discourse, without adding any further explanation of it, to make the Commissioners believe that I accused myself of blasphemy at that time, when my whole scope was to vindicate myself from the undeserved imputation of it.’

Now I shall present you with depositions and evidence given in on my behalf, touching the

8th and 9th articles, viz. That Christ is not God; and, That Christ is not Jehovah.

But in the first place I refer you to my Answer to these Articles; in which you may see the occasion of the discourse before the Committee, touching the Godhead of Christ; and that I never owned any such monstrous position, as, That Christ is not God.

In the second place I come to the witnesses. The first of which was Mr. Francis Pordage, brother to me.

Now this deponent being asked whether the words, That Christ was not God, and that Christ was not Jehovah, before the Committee at Reading, were not delivered in a hot dispute, he saith they were.

And being further asked whether in the same dispute these words, That Christ was not God, were not limited by me; he saith, The Doctor did express it with this limitation, That Christ was not the Father.

Now follow the cross examinations of the accuser, and some other of the ministers.

Mr. Pordage being asked by them the ground of this dispute, he thus answered, That the dispute arose upon a definition of Blasphemy which Mr. Tickle gave to Mr. Blagrove, That it was against God. To which the Doctor replied, He saith it is against God, and yet chargeth me for speaking against Christ.

Note, Here are some things prevaricated by the clerk, the ministers at that time being very hot in examining this deponent—I must here therefore a little correct it by the line of truth.

Mr. Pordage indeed said that the dispute arose upon a definition of blasphemy, which Mr. Tickle gave to Mr. Blagrove. But then a minister asking him whether the definition was not thus expressed, That blasphemy was an evil-speaking against God? he replied, He could not tell whether it was expressed against God, or against God the Father. But now I shall proceed as the clerk took them.

Mr. Pordage being further asked by me, whether in that dispute I did deny that I held Christ not to be God? he saith the Doctor did declare to Mr. Blagrove, That Christ was God.

Hereupon he was asked by the Commissioners and Ministers, whether there was not so much distance of time at the least between the Doctor's denial of Christ to be God, and his correcting of it afterwards, as required proof of Mr. Tickle, to prove him to be God and Jehovah? the deponent doth acknowledge the same.

And the deponent being asked whether he did hear Mr. Tickle speak any word of God the father in that dispute? he saith, he doth not remember that Mr. Tickle used any such expression.

This deponent being asked by me, whether frequently in that dispute, when I spake of denying Christ to be God, I did not speak it always in relation to God the Father? he thus answered, The Doctor did then speak in re-

lation to God the Father; but he cannot say frequently or always.

Moreover the former deponent being asked by me, How I did explain myself in St. Lawrence church concerning the divinity of Christ, when I was commanded by the Committee at Reading to explain myself in a sermon there? he saith, In that sermon the Doctor did clear himself concerning the Trinity of persons, and that Christ was God; and did assert the same as his avowed judgment.

After this, being asked by the Commissioners whether the Doctor did not make his limitation, if any, after he was confuted by Mr. Tickle concerning the deity of Christ? the deponent answereth to this, That it was after Mr. Tickle had cited many Scriptures to prove the deity of Christ.

But last of all being asked by me, whether he understood me at that time to be confuted or mistaken? he saith, mistaken.

FRANCIS PORDAGE.

The next witness is *Mary Pocock*, sworn again, and further examined.

Who being asked by me whether this expression, That Christ was not God and Jehovah, was not spoken in a dispute before the Committee at Reading? she saith, She was before the Committee of Berks, where she heard the Doctor in a dispute with Mr. Tickle concerning Christ; in which dispute she heard the Doctor say, Christ was not the Father. But she did not hear him deny that he was God the Son; neither then, nor at any other time, but owning him to be perfect God and perfect man.

And being further asked, whether she did not hear the Doctor express that Christ was not God with a limitation, and with what limitation? she answered, Yes, and that the same was thus, He was not God the Father.

And being further asked by the Doctor, Whether she did not hear him deny in that dispute, That he held Christ not to be God? she saith, she did apprehend him so, viz. That he did deny he held Christ not to be God; and so far as she was satisfied with it.

And being asked by the Commissioners, Whether she did not hear the Doctor in that dispute, deny Christ to be God? she answereth, she heard him deny Christ to be God the Father.

And being further asked, Whether the words of God the Father were not spoken by the Doctor, after Mr. Blagrove did tell him, It he held such opinions, they must proceed against him? To this she saith, Mr. Blagrove put some questions to him, what they were she cannot remember.

And being further asked, Whether the Doctor did not bring in the expression of God the Father, after many Scriptures cited by Mr. Tickle to prove Christ to be God? To this she saith, some scriptures Mr. Tickle did bring; but she is not able to say it was before the Doctor did express God the Father.

MARY POCOCK.

After this, I desired the Commissioners, that if they were not yet satisfied, they would hear my witnesses which I had there ready to be sworn; that I had formerly cleared myself of holding Christ not to be God and Jehovah; and that I had held forth the contrary as my avowed judgment, viz. That Christ was God and Jehovah, in a sermon before the Committee of Berks at Lawrence-Church in Reading; and how afterward I was cleared by their vote from these Articles now in debate, and particularly from this of holding Christ not to be God. But they would not suffer me to produce the evidence of these witnesses, replying, they had nothing to do with what other Committees before had done; they would proceed according to the proofs of the present witnesses.

But nevertheless I shall here present to the judicious reader the evidence which they through prejudice rejected.

Which was this that follows.

'I confess I heard the Doctor deliver himself in a sermon at Reading in Lawrence-Church, where the Committee of Berks was present, out of Ezek. cap. ix. ver. 4, 5, 6, 7, after this manner, that Jehovah, taken *late*, largely, including the Trinity of persons, so they are all Jehovah: but take Jehovah *strictly*, only for the person of the Father, and then Christ is not Jehovah. And hereupon he further said, what dealings have I had from my fellow-ministers, but as Jacob had from Esau, Obad. ver. 10, 12, who spake proudly against his brother Jacob in the day of his distress. And there he avowedly declared, that the thought of denying the deity or Godhead of Christ never entered into his soul. Moreover,

'These following witnesses were present to attest on oath their former depositions, taken before the Committee of Plundered Ministers, which were these.

'This deponent (Mr. Francis Pordage) further saith on oath, that he was present before the honourable Committee of Berks, when the Doctor was cleared by the vote of the whole committee, touching the business at Ilsley, and concerning those Articles, that Christ is not God and Jehovah.

'This deponent (John Hambleton) saith on his oath, that he was present before the honourable Committee of Berks, when the Doctor was cleared by the vote of the whole Committee, concerning Ilsley business, and these Articles of Christ's not being God and Jehovah.

'And this deponent further saith on oath, that he was at Reading before the Committee of Berks, where the Doctor was cleared of the business at Ilsley, and from the false aspersions laid to him, as if he denied Christ to be God or Jehovah, and that by the vote of the whole Committee.

'But the Commissioners not receiving these testimonies, I earnestly desired them they would hear the evidence of some witnesses there present, touching the tenor of my ministry since that dispute concerning Christ's

'being God, which I looked upon more considerable than one expression uttered in a dispute upon a mistake, (if Mr. Tickle swears the truth.) But they denied this reasonable request, saying, they were in haste; and that these testimonies were but dilatory and impertinent. Which notwithstanding I shall here present, to be weighed by the judicious reader.

'These four witnesses (Mr. Francis Pordage, Richard Higgs, Mr. Samuel Pordage, John Higgs) were ready to attest this which follows upon their oaths, which was writ down in some of their note-books.

'We confess we heard the Doctor preach out of Matth. i. 23, in the year 1652, concerning Christ's birth; at which time he speaking of six wonders, delivered the four last after this manner:

'The third wonder in Christ's birth was this, That he was born a perfect man, a true natural man, Luke i. 42, where Christ is called by Elizabeth the fruit of the Virgin Mary's womb; Gal. iv. 4, made of a woman; Gal. i. 1, not only in and through a woman, but out of the substance and nature of the virgin. Fourth wonder, that Christ was born perfect God, John i. 14. 'The Word was made flesh:' who is meant by this Word? The eternal Word, the Word Christ, Heb. i. 2. Fifth wonder, behold two distinct natures born in him, viz. The deity and humanity, the godhead and the manhood, Rom. i. 3, 4. According to the flesh, he is of the seed of David; and according to his divine nature, he is the Son of God. These two natures remain distinct in Christ's person; John viii. 58. 'Before Abraham was, I am.' According to his divine nature, he was before Abraham; and according to his human, after. Sixth wonder, behold two natures hypostatically united in one person! These two natures do not make two persons, two Christs, but both these natures hypostatically united together, make up but one person, Matt. i. 23. 'Emmanuel, God with us.'

'The nature of this union was after this manner explained:

'It was an inconvertible union, an indivisible union, an unconfused union, an inseparable union, a substantial and real union, yet a mystical union.

'We also heard the Doctor in Bradfield church, at another time, about 1653, deliver himself (out of John i. 14, concerning the Word's being made flesh) thus, viz. That this Word was Christ, the eternal Word, that is co-eternal, co-essential, and co-equal with the Father, Prov. viii. 22, 23, 24, 25. I 'was set up from everlasting, &c.' John x. 30. 'I and my Father are one.'

'Besides, we can with a good conscience testify, that in his public ministry, out of divers texts of Scripture, we have heard him clearly hold forth Christ to be God.'

So much for these Articles, as to the testimony of witnesses.

‘And now we must inform the readers, that I have hitherto in truth, without partiality toward myself, or passion and prevarication toward my adversaries, presented the depositions and evidence on both sides, touching the first charge: I would therefore request, that these following particulars, drawn together by way of recapitulation, may be seriously weighed and considered.

‘*Part. 1.* That to most of these nine Articles they have but one witness, without any concurrent testimony, which is not sufficient proof, according to the Ordinance they are to act by; in which it is expressed, that at least there must be one witness with concurrent evidences.

‘*Part. 2.* That wheresoever the accuser hath two, I have also two to balance them.

‘*Part. 3.* That although many of the Articles are in gross sworn to positively, yet in the cross examinations you will find such limitations as these, ‘according to our best remembrance,’ and ‘according to our apprehensions, in the same express words for the substance of them, &c.’ which cannot therefore amount to legal evidence, being invalid in point of law; because, as the judicious lawyer saith, if the deponents swear not positively and syllabically, they may by changing, adding to, or taking from the express words, usurp the place of judges, and so prevent their work and duty, which is to judge whether such express terms are criminal or not; which they cannot do after the terms be altered, and made criminal already by the witnesses misrepresenting them.

‘*Part. 4.* That my witnesses in reference to the most substantial questions, are positive in their answers.’

Now I come to the second Charge of Articles in reference to the proof, being exhibited against me by one Joseph Cook, an unknown person.

*Art. 1.* One Mrs. Lewyn being with child, and near the time of travail, sent for Dr. Pordage’s mother to be her midwife; but he would not suffer her to go, saying they would not be guilty of such a beast-like life, meaning Mrs. Lewyn’s being with child by her husband.

*Depos.* Mr. John Lewyn of Hamsted-Norris, sworn and examined the 2nd of November, at the Bear in Speenhamland, before the Commissioners, to this Article saith, he cannot depose.

*Ann Lewyn.* Wife of John Lewyn, minister of Hamsted-Norris, sworn and examined to the second paper of Articles exhibited against Dr. Pordage, saith, to the first Article she cannot depose.

*Art. 2.* The said Dr. Pordage coming to the house of Mr. Lewyn, in his discourse with Mrs. Lewyn, blamed her for having children by her husband, and argued with her the unlawfulness of having children by her husband.

*Depos.* To this article Mr. Lewyn saith he cannot depose.

To this second article Mrs. Lewyn saith, that

the Doctor told her, when she had two children, a boy and a girl, she had enough, one for her husband, another for herself: to which the deponent answered, As it shall please God. Then the Doctor replied, Fish, it is as yourselves will. But she saith, the Doctor did never persuade her to live from her husband.

*Art. 3.* In his discourse to Mr. Lewyn concerning the same subject, he endeavoured to maintain the unlawfulness of their having children; and said, that Adam was male and female in himself, and had he not fallen, he had brought forth children himself; and to maintain and prove the same by Scripture and otherwise.

*Depos.* To this third Article Mr. Lewyn saith, that about three years since, the Doctor and this deponent had some discourse at the deponent’s house, about some principles of religion: the Doctor did urge that place in Genesis, that he made them male and female, but whether he meant Adam singly, or what mental reservation he had, the deponent knoweth not. And further to this Article he cannot depose.

To this third Article Mrs. Lewyn saith, she heard the Doctor and her husband in discourse to the purpose of the said Article; but what the words were, she cannot depose.

*Art. 4.* In his discourse with Mr. Lewyn, which was about the time that one Everard was with him in his house at Bradfield, who was generally reputed a conjurer, he asked Mr. Lewyn whether he would not be afraid if he should see his own picture or shape, intimating that he himself had used to see his.

*Depos.* To this fourth Article Mr. Lewyn saith, That about the time mentioned in the Article, the deponent met the Doctor in London; in discourse with him the Doctor asked him, if it would not be terrible to see apparitions? but did intimate nothing, that he used to see any himself.

To this Mrs. Lewyn saith she cannot depose.

*Art. 5.* The said Dr. Pordage hath had for some weeks together in his house the said Everard, and one Tawny, who stiled himself king of the Jews, who had been questioned, as it is generally reported, for holding dangerous and unsound opinions, as that there is no hell, and the like.

*Depos.* To this Mr. Lewyn deposed nothing, and Mrs. Lewyn saith she cannot depose.

‘Now all that I shall say to this Charge, and the proofs of it, consists in these three subsequent particulars.

‘*Part. 1.* What Paul saith, Acts xxiv. 13. ‘Neither can they prove the things whereof they now accuse me,’ I may say here; for many things are laid to my charge, but nothing proved by this unknown accuser. But it is an act of subtle policy, to charge boldly, though they prove little of it, which hath been practised against me in this Trial, as every one may see.

‘*Part. 2.* For the further satisfaction of the reader, in reference to this Charge, let him

‘look back upon my former Answer, given unto it before the witnesses were examined.

*Part. 3.* I look upon myself in some measure obliged here to give a short account of my judgment concerning marriage; the holding forth of which may have occasioned my enemies to have framed some of the precedent Articles against me. I must therefore acknowledge, that I prefer virginity before matrimony, the single state before the conjunct; and that persons, though in a married state, [1 Cor. vii. 38.] may by consent abstain from the enjoyments of that state, and so be in it as though they were not in it, living as single, though in an united form. This now is my judgment and deliberate practice, being according to that of Christ, Mat. xix. 12. ‘He that is able to receive it, let him receive it:’ where he speaks of the law of Abstinence, and Christian Eunuchism; which these words immediately going before ‘hew, viz. ‘There be Eunuchs, that have made themselves Eunuchs for the kingdom of Heaven’s sake.’ Here is the practise, and the end of it, which ought to be the growth and increase of God’s kingdom in the heart; to which the mortification of the affections, and the abstraction of the soul from the corrupt sensitive nature, does make way. And certainly it were well, if Christians, in this corrupt declining age of the world, did more eye and imitate the pattern of Christ’s life, who as he was born of a virgin, so lived in virginity, and the single devoted life; leaving an example to all that are able [Mat. xix. 12.] to tread in his steps, and follow him. And further it is fit for all that are either single or married to consider, that all private bonds, laws, and engagements, ought to strike sail to our highest laws and engagements to God; and that whensoever they cross one another, the highest and supreme law, by which we are obliged to live to God in purity and integrity, must have the precedency. Now my holding forth and declaring this my judgment, together with my own practice, hath given occasion to many (who are as the generation before the flood, eating and drinking, marrying and giving in marriage, and taking complacency in the delights of the flesh) to speak evil of me, as one that breaks bonds between relations, though no such thing can (in truth) be proved against me: for it is not my design to make proselytes to my judgment, being willing to leave all to the rule of light in their own conscience. Though I have said, and cannot but say, that it were well if Christians would more labour after, and pray for the gift of Contency, and not involve themselves in the entanglements of the world, till they had used all means of mortification prescribed in the holy Scripture, to subdue their natures: and it were happy if the present generation could clearly distinguish betwixt those marriages that are idolatrous, adulterous, and bestial, and those that are holy, pure, divine, being made in the Lord according to his will, and so lawful and honourable. But alas! most people now are as those

in the days of Noah, who being insensible of God’s intended judgment by the deluge, so-laced themselves in the pleasures and delights of the earth, till the flood came and destroyed them. Hence there is much need of some at this time, to call people to self-denial and imitation of Christ’s life, to live up to the highest and purest rules of Christianity, in the mortification of their flesh, and in the compleat devoting of themselves to a constant attendance upon the Lord, as waiting for his coming ut spirit to destroy the man of sin, and overthrow Babylon with all its idols. So much for the third and last particular, which shall conclude the things of this Charge.”

Now I am come to the depositions of my third and last Charge, some of which were taken Nov. 22, being the fourth time of my appearance: the other Dec. 7 and 8, being the fifth and last time of my appearing before the court.

But before I present the particular Depositions, I must here inform the reader of two things, which relate to the last time of my appearance, and to this last Charge; one of which shews the cruelty, the other the unjustness of the Commissioners. The first then is this: The seventh of December having been taken up in this examination of my witnesses to the first Charge, which continued till it was late in the night, the Commissioners called for more lights, that they might proceed to the examination of witnesses in reference to the third Charge. Whereupon I replied it was late, and I had many witnesses to examine upon the last Charge. At this Mr. Fowler the accuser rose up, and urged the proceeding to the last Charge; saying, it would quickly be dispatched. Then the Commissioners cried out, Fetch us more candles, we will make an end of it this night. To which I replied, Gentlemen, I have here stood very long before you, and having not dined, (through the urgency of my business) I am not well, being very faint, and much spent and wearied; I desire you would therefore stay till the next morning. But they peremptorily denied this just request, and resolved to proceed. But they permitting me to withdraw for a little space, through emptiness and weariness I fell very sick, and was forced to go into my bed: at which the Commissioners were very much troubled, seeming to consult whether they should proceed to judgment. The second thing is this: on the morrow the Commissioners requiring me, against many objections which I made, to give in my interrogatories by writing; afterward judged most of them dilatory and impertinent to the business, and so not fit to be examined. To which I objected, whatever my proofs were, they ought in justice to hear them, by examining the witnesses to my interrogatories, and afterwards to judge of them, whether valid or invalid. But nothing I could speak prevailed with them, to obstruct their rejecting most of my testimonies.

But now as to the particular depositions, relating to the third Charge, exhibited by Mr.

Fowler, I shall here present them to be weighed in the scales of justice by the reader.

*Art. 2.* That Jesus Christ was not perfect; alleging that text to confirm it, 'He cried out, My God, my God, why, &c.'

Mr. *Christopher Fowler* sworn and examined (at Reading, Novem. 23.) to this Article, saith, That about five weeks or a month since, he acquainted Mr. Daniel Blagrove the younger, that the Commissioners did intend to summon him to testify what he knew of Dr. Pordage in relation to Jesus Christ; and the deponent asked him, if he heard the Doctor say, that Christ was not perfect? To which he answered, Yes.

Now as to my defence against this testimony, not repeating the illegality and invalidity of it, I have these things to say.

1. That the clerk hath left out some cross-interrogatories, which were proposed by me to the accuser, in reference to this his deposition. As first, whether he asked Mr. Blagrove, whether I spake it from myself, as my judgment, or related it as delivered by and heard from another? which question the accuser waved. And secondly, If he did ask it, what was replied to it by Mr. Blagrove? which likewise was waved by him without any positive answer. Whereupon I said to the Commissioners, I hope you will not take this deposition as evidence against me, without summoning Mr. Blagrove himself, who only can resolve the truth of these particulars.

2. In the second place, I shall refer you to my answer to this Article; in which you may see, that I only related what I had heard another speak at a public meeting in London, the thing being much against my judgment.

3. In the third place, I must tell you that I had three witnesses ready to depose on oath, That after my coming from London they heard me relate this, as spoken by Mr. Erbe, y in a public sermon at Somerset-house; which testimony was according to my answer to this Article, though accounted impertinent by the Commissioners, and so rejected, without examining the witnesses.

4. Farther to clear my innocence in this particular, I desired them to hear what my witnesses could say, as to the tenor of my ministry, touching Christ's being a perfect Redeemer: But this was also rejected as impertinent. But whether this subsequent testimony, intended to have been given in, was not as weighty as the accuser's deposition or hearsay, let the reader judge.

We have heard the Doctor preach in Bradfield church (about 1632, out of Coloss. i. 14. 'In whom we have redemption,' &c.) after this manner. These words he divided into three particulars; 1. Into the Redeemer, in whom. 2. The Redeemed We. 3. The act itself, Redemption. As to the first particular, he thus enlarged himself: Who can this redeeming person be, but Christ? Acts iv. 12. 'Neither is there salvation in any other, for there is no other name given under heaven,

'whereby we must be saved.' 1 Cor. iii. 7. 'For other foundation can no man lay, than that is laid, which is Jesus Christ.' As to the second particular, 'The persons redeemed,' he said they were the whole mystical body of Christ. Thirdly, As to the third particular, the act itself, redemption, he said it implied a deliverance from a state of bondage into a state of liberty; which he opened at large in every particular, setting forth the riches of this redemption to us by Christ.

And we heard him further preach in Bradfield church, about 1654, from these words out of 1 Tim. i. 15. 'That Jesus Christ came into the world to save sinners,' viz. That Jesus Christ was a perfect Saviour, in reference both to his prophetic, priestly, and kingly office, every one of which heads he opened at large.

Now let the reader but impartially weigh the accuser's illegal deposition, with the particulars here recited on my behalf, and judge whether the Commissioners have not broken their own law, the law of nature, and the law of Scripture, in taking this deposition of my accuser's into their sentence of effectment, in which they expressly condemn me for holding, That Christ was not perfect.

*Art. 3.* That the blood of Christ was not meritorious of any man's salvation.

To this Mr. *Christopher Fowler*, sworn and examined, deposed, That about three weeks or a month since he asked Mr. Daniel Blagrove the younger, whether he did not hear the Doctor say, That the blood of Christ was not meritorious of any man's salvation? he answered, he heard him to that purpose.

To balance this deposition, let the reader consider,

1. That the accuser is here deponent, which is against law.

2. That the deposition is but a story or hearsay, and no legal testimony.

3. That the deponent was not able to answer to any of my interrogatories, so as to declare where, before whom, or on what occasion this was spoken; only protested as he was a Minister of the Gospel, that Mr. Blagrove told him so.

4. That I am not guilty of holding any such thing, as my Answer to this Article shews.

5. That seeing I had no other way of clearing my innocence, but by shewing my judgment, and producing proofs of the tenor of my ministry touching this particular; I desired them to examine some witnesses, that were there ready to attest this which follows:

We heard the Doctor in Bradfield church (about 1632, out of Coloss. i. 4, viz. 'In whom we have redemption through his blood') deliver himself thus: That the fourth particular in this text, was the means of this redemption; expressed in the last words, 'Through his blood,' to be understood *per modum meriti*, 'through his meritorious blood.' 1 Cor. vi. 20. 'Ye are bought with a price,' that is, the price of blood. 1 Pet. i. 18, 19. 'Forasmuch as

'ye know that ye were not redeemed with  
'corruptible things, as with silver and gold,  
'from your vain conversations, but with the  
'precious blood of Christ.' Acts xx. 28.  
'Which he hath purchased with his own blood.'

'We also heard the Doctor in Bradfield  
'church, (about 1654, out of these words, Isa.  
'xxxv. 6. 'In this mountain will the Lord of  
'Hosts make a feast of fat things,' &c.) speak  
'thus; 'That one dish amongst the dainties of  
'this feast, was the blood of Christ; which he  
'opened, to be cleansing purging blood: 1 John  
'i. 7. 'Having cleansed us from all our sins  
'through his blood.' And reconciling blood,  
'Coloss. i. 20. 'Reconciled through his blood.'  
'And pardoning blood, Coloss. i. 14. 'Through  
'his blood, even the forgiveness of our sin.'

'And we have oft heard him in his ministry  
'thus set forth the efficacy of the blood of  
'Christ.'

'But you must know that this testimony  
'would not be received, for they judged it inva-  
'lid, though they received the accuser's hearsay  
'as evidence against me. Now whether this  
'dealing was not more suitable to corrupted eth-  
'nicks, than to such professors of religion, let  
'knowing persons judge.'

*Art. 4.* 'Pish! It is a poor thing to live  
'upon the blood of Christ.'

*Depos.* *Susannah Grip*, wife of John Grip  
of Reading, joiner, sworn, deposeth, This depo-  
nent told Dr. Pordage, that it was a high thing  
to live upon the blood of Christ. To which  
he replied; To live upon the blood of Christ,  
that is a poor thing; and repeated the same  
again, and said, Thou art a babe, thou knowest  
nothing; to live upon the blood of Christ, that  
is a poor thing. Whereupon the deponent's  
heart fell almost dead with fear at his words.  
And being asked by the Doctor, whether the  
same were delivered in the same very words?  
she answered, Yes, in the very same words.  
Being asked where? she replied in the kitchen:  
Being further asked when? she saith, four years  
since to the best of her remembrance; but who  
was then present, she doth not remember.  
And being asked by the Doctor, upon what oc-  
casion the same was spoken? she saith, the  
Doctor was speaking something in a rambling  
manner, which she did not understand; but  
she said, she thought would speak something  
to him, that he should understand and rejoice  
with her for it; and that was the occasion of  
the discourse; and that the Doctor's words  
were without explanation. This deponent be-  
ing ready to faint, said, What then, Doctor?  
He answered, I know not what the matter is,  
that I must speak to you; I do not use to dis-  
cover myself: but he told her something of the  
man that died at Jerusalem, which she did not  
remember, being then so amazed.

The Doctor's Answer to the eighth Article  
being read unto her, she saith, that all the cir-  
cumstances mentioned in the said Answer, are  
all of them false and untrue.

Now as to this deposition, what is further to

be added, to give the reader more light to judge  
of both the Article and Deposition, is this:

Not to speak any thing of the levity and  
rashness of this woman, which is well known  
to the inhabitants of Reading, and may make  
her testimony the less to be valued? she in her  
rash denial of the circumstances of my Answer,  
confidently spake a known untruth upon her  
oath, and so made herself guilty of open per-  
jury.

Whereupon, when I came to make my de-  
fence to invalidate her testimony, I presented  
four witnesses, who were ready upon oath to  
prove her perjured.

The first of these was one Mr. Richard Stock-  
well, esteemed by all moderate persons that  
know him to be a sober and pious Christian.  
Although he was excepted against by Mr. Fow-  
ler the accuser, as an Erberist, as this subse-  
quent deposition sheweth.

Mr. Fowler being sworn, as to his know-  
ledge of Mr. Stockwell, deposeth, That he con-  
ceives the said Stockwell is an Erberist; be-  
cause that when the deponent (being charged  
to be a slanderer of him) did offer to make a  
public recantation, and to confess himself to  
be a slanderer, in case the said Mr. Stockwell  
would deny the doctrine and opinion of Mr.  
Erbery, which he refused.

Notwithstanding which, the Commissioners  
would examine him, if the Doctor would ask  
him any material question; but do not think  
fit to examine him to their due or undue taking  
of Mrs. Grip's examination which the Doctor  
insisteth on.

Now let the reader judge whether the ques-  
tion was not material, which this witness would  
have answered to by oath, viz. Whether Mrs.  
Grip did not aver on oath in open court, That  
she never railed against Mr. Fowler? To this  
one Mr. Tench was ready also to be sworn in  
the affirmative: there were also many others  
which heard it. And further, I had two more  
substantial witnesses, who offered to swear  
they had heard Mrs. Grip rail against Mr. Fow-  
ler in public meetings before many witnesses.  
Mrs. Eleanor Burleigh was willing to depose,  
That she heard Mrs. Grip say, That Mr. Fow-  
ler was a son of Belial, &c. and one Mrs. Kent  
would have attested, that she heard her rail  
against Mr. Fowler in the same and the like  
speeches, with much more. Now because the  
clerk had not taken that expression of hers,  
That she never railed against him, therefore the  
commissioners made it their pretence, of not  
examining the witnesses to it, as a thing imper-  
tinent; though by the attestation of that, with  
the testimony of the other two witnesses, she  
hath been proved directly perjured. But Mr.  
Fowler the accuser, being a great friend of the  
woman's and seeing she was in danger to  
be proved perjured, and so an insufficient wit-  
ness in all her testimonies, prevailed with the  
Court against the importunate, rational, and le-  
gal pleas of my counsel, to reject these fore-  
mentioned witnesses. The unjustness, palpable  
partiality and illegality of which action I leave



to be weighed in the balance of equity by the impartial reader, who in justice may esteem this woman as really perjured, as though the witnesses had proved it, and value her testimony accordingly. And truly, some of the godly party at the said hearing with what impudence and rashness she affirmed on oath she never railed against Mr. Fowler, confessed they could not but wonder at her, being it was so commonly known.

But to conclude, let the reader take notice, First, that this Article may be either true or false, according to the applying of it to particular persons. Secondly, That though it were taken in the worst sense, yet it were not within the act of scandal. Thirdly, That there was only one witness to it, to whose testimony what credit is to be given let the foregoing particulars declare. Fourthly, That I had witnesses ready to depose, That in the tenure of my ministry, I had often held forth Christ's blood to be of a cleansing, redeeming and justifying nature. Fifthly, That in my Answer to it, I have given the true ground and occasion of it.

Art. 5. 'Pish! there was no such thing as Persons in Trinity.'

*Depos.* The former Susannah Grip saith, That the Doctor came into her kitchen at another time, as she thinks from the committee, and said, That whereas ministers spake of Persons in Trinity, there is no such thing; "There are Three that bear record in heaven:" But there is no such thing as Persons in Trinity.—Note, in that Scripture, 1 John v. 7. should be added; and that in reference only to the terms.

Now my interrogatories to her upon this Article, were these; 1st, When I spake these words? She saith, When I came from the committee, which was two or three years since, or thereabouts. 2dly, Before whom? She answereth, Whether her maid, or any body else, or who was present she doth not remember. 3dly, Being further asked, whether this expression was delivered without any further limitation or explanation? She replies, Without any, as she remembers.

Now what I have more to add, to clear the truth in reference to this Deposition, is this:

First, I refer the reader to my Answer to this Article, in which you may see that I made a relation to this woman of what had passed before the committee, where some questions were proposed to me concerning the Holy Trinity. Secondly, I had a witness present to testify on oath, That what I said before the committee, was only this, That there was no such word as Persons in Trinity in that text, 1 John, v. 7, a relation of which I made to this woman, who, as it seems, mistaking my meaning, comes now four years after to accuse me; though at the very time she seemed to assent to what I spake, and made no exception against it; nor so much as asked me to explain myself for her satisfaction, though she had a very convenient opportunity. Thirdly, she is but a single witness, and her testimony not positive, she add-

ing, 'as she remembers.' Fourthly, I desired the commissioners to hear what my avowed judgment was, from the testimony of some witnesses who were ready to depose what I had held forth in my public ministry, touching the Persons in the Holy Trinity. But the commissioners refused to examine the witnesses, whose evidence was this:

'We heard the Doctor in Bradfield church (about 1653, from these words, John, 1, 14, "The Word was made Flesh,") deliver himself thus: For the understanding of the person that was made flesh, you must consider the unutterable mystery of the Holy Trinity; the Unity distinguishing itself into three persons, the Father, Son, and Holy Ghost: Mat. 28, 19. "Baptizing them in the name of the Father, Son, and Holy Ghost." 1 John, v. 7. "There are three that bear record in heaven, the Father, the Word, and the Holy Ghost." Now which of these three Persons are made flesh? It is not the first Person, the Father, nor the third Person, the Holy Ghost; but it is to be understood of the Son, the second Person in the Trinity.

'We have also heard him out of these texts, Ezck. ix. 4, 5, 6. Psalm cx. 1. Mat. xxviii. 19. 1 John, v. 7, deliver in Bradfield church, the Distinctions of the Persons in the Trinity; as that the Father is not the Son, nor the Son the Holy Ghost, and the Holy Ghost neither the Father nor the Son, but each distinct.'

So much for this Article.

Art. 6. 'That it was a weakness to be troubled for sin.'

*Depos.* Mr. Benjamin Woodbridge, minister of Newbury, sworn and examined, deposeth, That Mr. William Twiss of Dorchester told the deponent, That Dr. Pordage maintained it to him, or spake in his company, That he was no Christian that could not commit the greatest sin, and not be troubled for the same; or words to that effect, to his best remembrance.

To this I replied before the Court.

I knew not the said Mr. Twiss, and to my knowledge I never saw his face. Being then engaged in the business of examining my witnesses, I said not much to the vindication of myself, as to this horrid imputation; the testimony being but a mere hear-say, and the deponent rendering it more invalid by these expressions, viz. "or words to that effect;" and "to his best remembrance."

But I desire the reader here to take notice of the weakness or envy of Mr. Woodbridge, that he should thus with a hear-say only, which he himself did not exactly remember, thus endeavour to asperse me, and render me odious, when he saw there were so many horrid things laid to my charge before: but I believe he will one day be touched in his conscience for dealing thus with me; for the Lord knows I am innocent as to the acting or holding of what he saith.

'I therefore (for the satisfaction of the reader) solemnly protest in the presence of Al-

'mighty God, that I never held any such opinion; for it is diametrically opposite to my principles; neither did I ever utter any such expressions as my judgment: and am confident, were that Mr. I was brought to my face, he durst not aver any such thing.'

To the seventh Article nothing is deposed, being contrived and reported abroad by the accuser, to draw an oath upon me, as you may see in my Answer to it.

*Art. 8.* 'That he asserted he knew nothing to the contrary, but that a man might company with more than one woman, &c.'

*Depos.* Susannah Grip saith, she told the Doctor, That she heard it was reported of him, he should keep unlawful company with a woman in London, and asked him if it were true? To which the Doctor asked her, Who said so? the deponent replied, She would not tell him. Whereupon the Doctor smiled, and was not troubled, but denied it, saying, No: but he made her a further answer, That he did not disallow of any such thing, as she understood him. But what his express words were, she cannot now remember.

Note, This last clause makes all invalid, and shews her rashness in swearing, that I did not disallow of any such thing; being she hath forgotten my words, by which only she can judge of my sense.

And the Answer of the Doctor to this Particular being read to her, she thus replied: She doth not remember the Doctor uttered any such passages as are therein mentioned; to wit, That he should say, I and a man loyn to all manner of suffering.

It was further read to her, that the deponent knew his life and conversation: This she could remember; and doth confess, she did then reply, she did not believe any such thing of him.

Being further asked by the Doctor, Whether this was expressed as his own judgment, or the judgment of some other? She thus replied; As far as she conceived, the Doctor did speak that passage of allowing that a man may have more than one woman, as his own judgment, not as another man's.

Note, she did conceive amiss; for if ever I spake it, it was in reference to the Ranters, who then were much talked of: for such carnal principles are very much against my judgment, and unquestionless against the truth.

Being further asked, Where it was spoken? she saith, in the deponent's own court. Being asked before whom? she answers, Nobody else was then present. Being asked when? she saith, It was about three or four years since.

But let the reader here take notice,

1. That this Article is not within the limits of the act. 2. That her testimony is not legal, in that it is single and not positive, she confessing that she had forgot the express words. 3. That this is against my avowed judgment; to prove which, besides my own assertions, I had present three witnesses, who were ready to depose, That I had often affirmed in conference,

that although this principle was owned by the Ranters, yet it was much against my judgment, as you may further see in my Answer.

*Art. 9.* That he hath very frequent and familiar converse with angels.

*Depos.* Mr. Christopher Fowler of Reading, sworn and examined, deposes, that about three weeks or a month since, he asked Mr. Daniel Blagrove the younger, whether he could not speak to the Doctor's converse with angels? He answered (as far as the deponent remembers), he could speak much.

Mr. Fowler sworn again, and further examined, November 23, at the Bar in Reading, before the commissioners, deposes, that about Michaelmas last, the deponent, speaking with Mr. Daniel Blagrove the elder, concerning the visions of angels that were at his house, in reference to Mrs. Pindar: the deponent told him, he the said Mr. Blagrove was able to say much to the purpose, it being in his house: and desired him thereupon to speak his knowledge of the truth, both in point of conscience and reputation, being censured for supporting such a man as Dr. Pordage.

The said Mr. Blagrove answered, Why, the Doctor doth converse with angels; and I believe when he comes before the commissioners, he will not deny but he doth converse with angels.

The deponent thus replied to Mr. Blagrove, If the Doctor will confess them angels, we will prove them devils.

Note, how full of pride and rashness was this speech of Mr. Fowler's, and how unsuitable to the Scriptures, and the law of charity! For there are two sorts of angels and spirits, good and evil, light and dark, holy and wicked, which are continually tending upon men in this world: the evil, to tempt and draw men into the same condemnation with themselves: the good, to guard and preserve them from the evil influences and malicious designs of the other. But doth not the accuser seem to forget, that the ministration of the holy angels still abides; who are 'ministering spirits sent forth to minister for those who shall inherit salvation?' Heb. i. 14. And the Psalmist says, 'The angel of the Lord pitcheth his tent round about those that fear him.' How then dare Mr. Fowler affirm, that if I confess I have communion with angels, they will prove them devils? How dare he thus limit the holy One of Israel, and shut up his favours within the narrow limits of his own conceptions and enjoyments? And why may not God, for the support and comfort of some precious saints, who in humility, self-denial and abstractedness of spirit, serve him day and night; I say, why may he not afford such a sweet and heavenly converse with the holy angels? What Scripture is there that speaks against it? Is it not suitable to what he afforded the patriarchs, prophets and apostles, and the primitive Christians? But if my accuser lives so much in his senses,

‘as to have no sense or knowledge of it, yet why should he thus rashly condemn others?’

But the accuser proceeds in his depositions: And further, this deponent saith, That he hath credibly heard something tending to this purpose, that Dr. Pordage hath seen the vision of the said Mr. Blagrave, somewhat a bright vision.

But here I put in a question, which was this: Mr. Chairman, I do confess in my Answer, communion and converse with angels; but pray ask Mr. Fowler, what converse with angels Mr. Blagrave understood, visible or invisible?

To this the deponent further saith,

That the entrance of this discourse with Mr. Blagrave, was in reference to visions that were seen with a bodily eye; and mentioned the visions of Mrs. Pindar, that were by her reported to be such. Upon this, he understood Mr. Blagrave, that the purport of his Answer was a visible converse with angels.

And the deponent further saith, That he delivered a summons for Mr. Blagrave to attest these things in person, to Mr. Cook, one of the commissioners, who sent the deponent word by letter, that he had shewed the same to Mr. Blagrave, who hath notwithstanding refused to appear.

And further, he spake thus in open court against Mr. Blagrave, though the clerk did not take it, viz. I do verily believe, such a witness he was in this case before, such a witness he would have been, were he now present: But I say, it was the plague of this county to have such a cursed committee.

Note, Mr. Fowler here asked me some questions to ensnare me, as, whether I had not seen the vision of Mr. Daniel Blagrave? To which I answered, To this profound question I will answer when I see it attested upon oath. And further asking me concerning converse with angels; the clerk took this answer:

The Doctor doth confess that he hath daily converse with angels: But he desires Mr. Fowler to declare what converse with angels Mr. Blagrave did inform that the said Doctor had.

The Doctor doth further say, that he heard it credibly reported, that he hath every day two angels dressing of him: to which he added, that they that reported it to him, said they had it from the mouths of two godly ministers, that would not lye, viz. Mr. Fowler and Mr. Ford.

Note, I brought in this story to shew the vanity and invalidity of such proofs as the accuser had before produced, as that he had credibly heard somewhat to that purpose, that I had seen the vision of Mr. Blagrave. And, for all the accuser knows, that which he heard so credibly reported might be as great an untruth as that which I heard reported of myself, as coming from him and his brother Ford, whose function seems very unsuitable to that of lying and slandering.

Afterward Mr. Fowler asked me again,  
VOL. V.

whether I had seen the vision of Mr. Daniel Blagrave? I answered, as long as it is attested only upon report, I would not answer to it.

Art. 10, 11, 12, 13. Concerning the apparitions of spirits, and of a great dragon.

Here I must intreat the reader seriously to weigh the following Depositions, from which my enemies have charged me to be a conjuror and a sorcerer; that so it may be seen, whether they have any better ground thus to esteem me, than they have to esteem Job, who was terrified through visions; and Christ who was tempted by voice and vision in the wilderness; and John, who in visions saw a great red dragon, and terrible locusts go forth of the bottomless pit, and three unclean frogs, the spirits of devils, going forth to deceive the world; I say, that they have to esteem these conjurors and necromancers for such sights.

But now to the Depositions:

*Depos.* *Susannah Grip*, wife of John Grip, of Reading, sworn and examined, deposeth, that the Doctor told her, that a great many spirits hovered about his window, and kept a noise; but the Doctor said, he told the company there should come in but one at a time; and that a dragon did come in with a long tail, and great eyes and fangs, and did spit fire at him.

And this witness further saith, that his angel stood by him in his own shape, in the same cloaths, band, and cuffs, and did protect him.

Note, Where this woman speaks truth, I shall not contradict her: But where she mistakes, I must inform the reader of the truth, and shew that she rashly swears untruths. Thus then I told her, that I had an angel of God that stood by me, assisted me, comforted me, and protected me, when that dreadful apparition was before me; and that the dragon was then over-come.

And I further told her that the angel or spirit of one Everard appeared in his own shape, cloaths, band, and cuffs, &c. Which compared with Mrs. Grip's deposition, shews her mistake. This Everard I suspected to be a conjuror, and to be instrumental in the raising of those apparitions; though I was not so sure of it as to prosecute him, or to swear he caused them: for the devil may take up any one's shape by God's permission, as it is generally thought he did Samuel's.

Further, this deponent saith, that the Doctor likewise told her, that Mrs. Pordage and Mrs. Flavel had their angels standing by them; and that he overcame the dragon; and that he said the children saw the spirits, and said, look there, Father! Being not afraid, alter they had fasted and prayed. And that the Doctor further said, that the spirits did afterward come into their chambers, and drew the curtains, and looked on them; but they would not take notice of them: And that the spirits did come about three days after he had fasted and prayed, and flashed open the curtains, and looked upon them.

'Note, For three weeks or a month there were very many, and very strange apparitions; but the curtains were never drawn but once, and that was by a spirit in the shape of Eve-rard. For some other particulars of this deposition, I do not remember whether I spake 'them or not.'

*Depos.* The Doctor being asked by Mr. Fowler, what he saith concerning the apparition of the dragon? the Doctor doth confess before the commissioners, that he hath seen very many dreadful apparitions of devils at his house; and that some of his family did see them; and that a dragon did come into his house with a long tail and great teeth: but that he said his angel did protect him, he denies. But he further saith, that about four years since he had apparitions both of good and bad angels, for three weeks together, at his own house: but from that time to this, they have ceased in that manner.

Being further asked by Mr. Fowler, the Doctor doth deny, that ever any angel appeared in his cloaths, band, and cuffs; and further saith, that his angel never did appear to him in any visible shape.

And being asked, whether he ever saw Mrs. Pordage's and Mrs. Flavel's angels standing by them? He answereth, he never saw them standing by them; but it doth not therefore follow that they might not stand by them: and though he can, yet he will not answer to any questions, but such as concern himself immediately.

And being further asked by Mr. Fowler, whether he did not relate to Mrs. Grip, that Mrs. Flavel and Mrs. Pordage had their angels standing by them? He answereth, he can neither affirm nor deny it; for he doth not remember whether he did, or no.

And being further asked by Mr. Fowler, whether he did not relate to the said Mrs. Grip that his children saw the spirits come into his house, and cried, Look there, father! And that the spirits did often come into his chamber, and draw the curtains when they were in bed?

To the first part of the question he answereth, he cannot affirm or deny it; for in truth he doth not remember whether he did, or no. To the second part of the question he saith, he doth deny it positively; and will prove the deposition to be perjury.

And the Doctor being farther asked, whether or no he knows that the children did see the spirits come up and down the house, or no, and whether they thereupon did say, Look there father!

To the first part of this question, he saith, he cannot know what the eyes of children do see; and otherwise he will not answer. And to the other part of the question, he answers, he cannot remember whether the children did say *yes*, or no; and therefore will neither affirm nor deny it.

*3d Witness.* *Susannah Grip*, daughter of the aforesaid John Grip, aged 21 years, sworn and examined, deposeth:

That about three or four years since, in her mother's kitchen she heard Dr. Pordage say, that a dragon came into his chamber, and that he expostulated and contended with it; and that he said the dragon did spit fire at him; and that his angel did appear to him in the shape of a man, with his band, and his clothes, and bandstrings, and did support him while he contended with the dragon. The deponent further saith, that she heard the Doctor say, that the spirits did come into his chamber, and drew the curtains, and looked upon him; and that the Doctor likewise said they were affrighted at it at first, but afterward, when they were used to it, they were not.

She saith she heard several other things to this purpose, which she cannot now remember to depose.

And being asked by the Doctor, whether the Doctor said that the angel that appeared with the band and band-strings, was the Doctor's own angel, or the angel of some other? She saith, to her best remembrance, he said it was his own angel.

*3d Witness.* *Elizabeth Penwell*, servant to Mr. Ellis of Shiffeld, and formerly servant to the Doctor, sworn and examined, deposeth:

That she saw something like a star in the red chamber in the Doctor's house by the bed's leg: it was light, and somewhat like a star; but the deponent cannot say it was a star. Yet it was in the night, and no other light in the room, to the best of her remembrance.

She further saith, that she hath heard music at several times at the Doctor's house, when she did not know that any instruments or musicians were in the said house. She saith she hath heard it in the kitchen, and in her mistress's closet; did apprehend the same to be near her, but saw none playing.

She further saith that Mrs. Flavel did usually lie in the Doctor's bed-chamber during the time the deponent was servant there, which was about a year and a quarter.

But immediately to this the maid added, But I never lived in such a family for piety and holiness, as that was; and I believe 'never shall again, except I return thither.

But this, by the clerk's knavery, was left out, although I stood by, and asked him why he did not write down those words. To which he replied, If you will have me, I must. I said, I will have it. Yet he neglected it; and I believe by the command of some of the court, who were troubled at any thing that seemed to make for me: but what unjustice this was, let the reader judge.

'But from these preceding apparitions of spirits in my family, in which we were merely passive, and by which we were excited the more to wait upon God in prayer and fasting my enemies have scandalized me for conjuration and sorcery, reporting so confidently that I am a conjurer, that many who are not acquainted with my principles and conversation, believe it so in earnest. But these horrid scandals I take up as my cross, and

'see myself in them conformable to Christ's sufferings, who was reckoned amongst conjurers and transgressors by the Jewish Zealots.

'But the Lord hath given me peace in my conscience, whilst my enemies have railed against me in their pulpits, as Mr. Ford in his Sermon at the assizes held at Reading, Feb. 28, 1653. In which, page 22, he saith, that there is one of the most eminent church-livings in the county possessed by a blasphemer, and in whose house the devil is as visibly familiar, as any of the family; and shall the horns of these beasts never be pared off by the civil magistrate?

'Here you see he endeavours to brand me for a conjurer, and calls me blasphemer, exciting the magistrate to prosecute me. And this was he who was chosen by the commissioners to make a speech in the court before they gave Sentence against me, who there by envious prevarication shewed himself a second Tertullus, though no orator.'

*Art. 14.* That Mrs. Margaret Pindar, acquainted with this doctrine of spirits, and pretending to be converted by visions of angels, doth think she was bewitched by them of Bradfield, &c.

*Depos.* Mr. Christopher Fowler, sworn to this Article, and examined, saith, that Mrs. Pindar, being asked by him, did acknowledge on Thursday last, at London, that at Mr. Blagrave's house, at Southcot, she heard a great noise of drums and trumpets; which Dr. Pordage (who was then sent for to her) told her was the alarm to the spiritual war. And that one night she had the vision of young Mr. Daniel Blagrave come to her bed-side, and she took him by the hand, which hand felt cold; which Dr. Pordage expounded to her thus: that the coldness of his hand signified that he began to be cold to vanity. And that she asked the Doctor what the visions meant; and he replied to her, We do not use to reveal one another's visions.

The Deposition taken on my behalf was this that follows:

Mrs. *Elizabeth Blagrave*, wife of Mr. Daniel Blagrave, sworn and examined: This deponent saith, she never heard Mrs. Pindar say that she was bewitched by them of Bradfield; but the said Mrs. Pindar told the deponent that her visions were from God; and that the said Mrs. Pindar told the deponent she never spake with the Doctor in her life.

This deponent further saith, that Mrs. Pindar told her she had been at Mr. Fowler's house; and that Mr. Fowler examined her touching her visions, and the deponent asked her what she said: to which she replied, she was sure she had said nothing to him that could hurt the Doctor. Hereupon the deponent asked her if she told Mr. Fowler that the Doctor did send these visions? To which she answered, She could not say the Doctor sent them, for a world.

This deponent further saith, that Mr. Pindar

told the deponent that his wife said, when she came to London, she would not say what she had said to Mr. Fowler, if it were to do again; for she perceived it was a snare, or a trap.

This deponent further saith; she was by when the question concerning the coldness of young Mr. Blagrave's hand was put; and the deponent asked it herself to one in the room; and the answer was, that the coldness of his hand, as far as they knew, signified his dying to vanity; which was delivered in a jesting manner. Which answer was not delivered by the Doctor. And the deponent saith, the Doctor never gave such an answer in his life, as she knows.

Here follow the Depositions of *John Grip* of Reading, joiner; who being sworn and examined, deposeth:

That he was at Mr. Blagrave's when Mrs. Pindar saw the visions that are mentioned in her confession; and that she said she saw a man in white, (as she thought) with the Lamb's book; and that the said man told her her name was written in the book; and that she heard a watch going, and that there appeared another in the likeness of a black man, with a knife, which he offered unto her.

And this deponent further saith, that at another time, at the deponent's house, the said Mrs. Pindar did inform the deponent that Dr. Pordage had said he had power to bestow the gifts and graces of the spirit on whom he pleased.

*Note.* That this disagreeeth from Mrs. Pindar's confession, under the head of the 14th Article, where she saith that she heard it reported at Southcot, That ere long the Doctor should have power—to bestow saving graces on whom he pleased.

And this deponent further saith, that another time he was at Mr. Blagrave's house, when the said Mr. Blagrave was ill, and kept his chamber; and Mr. Blagrave and the deponent fell into discourse concerning Dr. Pordage in presence of Mrs. Blagrave; that in the said discourse Mr. Blagrave said to his wife, that the Doctor held strange opinions, such as were not agreeable to the word of God: for he did maintain that Jesus Christ was not God; and that he was a Type, and but a Type; man, and not God; a shadow, and not the substance. And Mr. Blagrave did labour very much to take off his wife's affections from the Doctor and his ways; but could not prevail. This was about three quarters of a year since, &c. the deponent's best remembrance.

In reference to these two last particulars, touching Mr. Blagrave and his wife, consider this following Deposition and Evidence.

Mrs. Blagrave, sworn and examined, deposeth, that she never knew any thing of the Doctor's judgment; neither did he ever bring the deponent into any judgment; and that she had never any discourse with the Doctor, till she did first begin with him: and that if ever

he had confirmed her in any thing, it was in nothing disagreeable to the word of God.

As to that part of the former Depositions, which concerns Mr. Blagrave's relation of what opinions I held, I had a summons for his personal appearance to witness the truth in that particular : but he being detained in London by earnest business, could not appear according to the summons, and therefore wrote this following Letter to the commissioners, which was exactly copied out by a friend of mine, who had the favour from Mr. Blagrave to read it.

"Gentlemen ; Understanding by this bearer, Mr. Samuel Pordage, that one John Grip of Reading, upon his examination against Dr. Pordage, did affirm upon oath, that having discourse with me lately touching the Doctor's opinions, I should say that he denied that Christ was God, and that he held him to be a man, and not God ; a type, and but a type ; a shadow, and not the substance : the things are highly blasphemous, if true. But this I assure you, if ever any such language fell from me, (which truly I do not remember) it was spoken as relating to that charge he lay under at that time, raised by some who seem to know men's meanings and opinions better than I do. In short, this I do affirm, and shall readily attest upon oath, when required, That the Doctor hath several times most solemnly avowed the contrary ; and to me by scripture, under his own hand, evinced it ; for the truth is, I have with much boldness charged the Doctor with things of that nature, having received them upon report. But upon debate he hath given me such clear satisfaction, both touching the divinity of Christ, and other matters of faith of the highest concernment, that I have stood silent, having nothing to object against him. I did therefore apprehend it a duty incumbent upon me thus to write ; for as I will never be instrumental to clear him in what he is guilty, so not to condemn him wherein I believe he is innocent.

"Thus, desiring the just and all-knowing God to direct you in this great work, I remain, Gentlemen, your friend and servant, DAN. BLA-GRAVE. Novemb. 28, 1654. Westminster."

I desired that this Letter might have been read in the open court : but they denied it, though I alledged that it was evidence on my behalf. But whether this was not more considerable, and so more fit openly to be read, than Mr. Grip's stories and hearsays to be openly received as evidence, let the reader judge.

But Mr. Grip further on oath deposeth, that at other times he hath often had conference with Mr. Blagrave. And at one time, above the rest, walking over the fields towards Southcot, we fell into discourse concerning Dr. Pordage ; and the said Mr. Blagrave did then tell him that the Doctor did go about to persuade him to leave off all employment, and to sell his estate, and retire to his house ; for his house was the Ark, as Noah's Ark was, to receive all those that must be saved. This was some

time the last summer. And that Mr. Blagrave did seem very much to slight and scorn it, and asked the deponent what he thought he should have got by it, had the Doctor prevailed. To which the deponent replied, that he thought the Doctor had a grand design in it : for Mr. Blagrave being taken notice of to be one of the wisest men in the county, if the Doctor had prevailed to draw him away, he might likewise have drawn away most of the county ; and then the Doctor would have set himself up like a Mahomet.

In opposition to this story, Mrs. Blagrave, sworn and examined, deposeth, That she had heard a muttering that Mr. Grip should say that the Doctor had persuaded Mr. Blagrave to leave all, and come and live with him. Whereupon the deponent asked Mr. Blagrave, about five or six weeks since, concerning it ; and the said Mr. Blagrave answered to the deponent, that he did not remember that the Doctor ever said any such thing.

This deponent, John Grip, further saith, that Mr. Daniel Blagrave the younger told him, when the spirit came upon the Doctor, he could leap over pales of a great height, about five foot and a half high, as the deponent could conceive by his relation ; and that this was told him within five months last past.

This deponent further saith, that Mr. Charles Blagrave told him some time the last summer, that Dr. Pordage should say that Christ was not perfect ; and that he quoted that place of Scripture, mentioning our Saviour's passion, when he cried out, My God, my God, &c. to prove the same.

*Art. 28, 29.* Concerning Mrs. Mary Pocock's relation to Mrs. Forster, of what was acted in my house ; and of Mrs. Havel's being in a trance, and seeing what was the philosopher's stone.

The Depositions of Mrs. *Mary Pocock*, taken at the Bear in Speenhamland, November 30, before the Commissioners, for the proof of the two former Articles.

Mrs. Pocock, sworn and examined, deposeth : the question being asked, Whether the deponent did not tell Mrs. Forster and Mrs. Evelyn, that the Doctor had contended with the dark Power in his shirt two or three hours ? she answereth, It is so long since that she cannot remember any thing positive she then said : but she saith there was some great Power then amongst the Doctor's family.

And being asked, whether she did not say to the aforesaid parties, That when the Doctor contended with the dark power, there was such an expostulation between them, as, Thou lyest ; and thou lyest, &c. she answereth, she cannot tell.

And being further asked, Whether upon this conquest of the dark power by the Doctor, she did not tell the aforesaid parties she should think the Doctor to be a bright man ? To this question she answereth, If she did not say so, she hopes she shall, when he hath the victory.

And being asked, whether she did not tell the aforesaid parties, the Doctor's family were strangely acted, some in their legs, thighs, and arms? To this she answereth, she cannot tell.

And being further asked, whether she did tell the said parties, that Mrs. Flavel did see in a trance the philosopher's stone? She saith, she cannot tell.

And being further asked, whether the philosopher's stone, seen by Mrs. Flavel in a trance, were not the Divinity in the Humanity? she answereth, she knows no such thing.

*Art 30.* This consists of seven particulars, being the first that relates to scandal in my conversation.

*Depos.* *Roger Laughton* of Heston in the county of Middlesex, locksmith, sworn and examined, deposeth:

That about nine years since, or upwards, Dr. Portage brought to the deponent's house Mrs. Flavel behind him under the name of Mrs. Fruin; and that both the Doctor and the said Mrs. Flavel did ask for entertainment for her; and that they did ask what they should give for her board, and her son Stephen's: and that they did bargain for eight shillings a week, and then he carried her away; and she came not till after Christmas. But he saith, how she then came, whether in a cart, with her trunk and clothes, or otherwise, he knoweth not: but the Doctor did not then come with her. And after she had been there a while, the deponent's wife conceived she was with child; which she denied, saying it was a Tympany. And that she remained there till betwixt Easter and Whitsuntide, where and when she was brought to bed of a daughter; and she did not desire any store of company to come to her labour, though the deponent's wife did desire it. And after she had been a short time delivered, the Doctor came and baptised the child in the deponent's chamber, and named it Hannah. And after that the Doctor called the deponent aside into his orchard, and prayed him to find out a private place, two or three miles from the deponent's house, where the said Mrs. Flavel might come now and then to see her child. The deponent said it would be inconvenient, because it was a time of soldiers, and the corn was high; and thereupon the deponent did not look out as he desired. And he further saith, when the nurse did bring the child oft-times to see the said Mrs. Flavel, she would not permit her son Stephen to call her sister, saying, Stephen, it is nurse's child. Afterwards the said Mrs. Flavel departed from the deponent's house to Kensington, where she remained about a month. And that the deponent having occasion to go to London, called at Kensington by the way, to speak with her; but she was gone: whereupon the deponent said her child was not well. Then two gentlewomen of the house told the deponent, that she denied unto them that she had any other child but her son Stephen. And the deponent further saith, that the Doc-

tor came to the deponent's house three or four times, in term-time only: And that both the Doctor and the said Mrs. Flavel did inform the deponent that she was married to one Mr. Fruin, a minister; but was now a widow, as both of them said when they came to the deponent's house.

For the clearing of truth, in reference to this deposition, I shall here annex the Confession of the same person, as subscribed by him, and owned before two sufficient witnesses; which is as follows:

That about nine years ago Dr. Portage brought a gentlewoman, by name Mrs. Fruin, behind him from London, as he said, to one Roger Laughton's house, a smith in Heston parish; that the said Mrs. Fruin agreed with him herself for her boarding.

That she told his wife, at her first coming, she knew not certainly whether she were with child, or not; but thought she was.

That her first husband's name was Mr. Flavel; and that she had had a second husband, by name Mr. Fruin, who also was then dead.

That the cause of her private living there, was in that her brother-in-law threatened he would have her body, if it were above ground, she being then in law with him.

That at the same time the Doctor owned that he dwelt at Reading; and that he was minister of St. Lawrence church; and that he knew the gentlewoman to be sober and godly.

That she told him, for his security, he might enquire at the Bulwark by the Tower of London; where he might know that she had there an estate in houses.

That after she had been in the said Roger Laughton's house about four months, she was brought to-bed of a girl, which was christened by the said Doctor, and named Hannah. That the time of her continuance with him was about three quarters of a year; in which time the said Doctor visited her some three times, or four at the most, and that in term-time, when he went to London.

That by enquiry he came to know she was in great troubles at law.

That the said Doctor never agreed with him, nor paid him for her board, nor removed her, so far as he knows, to Kensington from his house.

R. L.

This was delivered in to the Court after Laughton had finished his deposition: but they would not suffer it to be enrolled among the depositions, R in some particulars crossing Laughton's present testimony, and in others, tending to clear the truth, in reference to the occasion of Mrs. Flavel's being there. But the accuser asking him whether he would not stand to his present deposition? he said, Yea. Whereupon the Clerk returning me the paper again, wrote this at the bottom of it, "Mr. Laughton acknowledgeth the two letters R. L. to be his writing; but will stick to what he hath now deposed."

"There was not a word altered after he had subscribed the paper, as two witnesses then present could attest by oath. Now the particulars in which he crosseth himself, cannot be all true. And if a man will solemnly own and subscribe an untruth, he may after swear an untruth: But the Confession he wrote last is much to be regarded, being he owned and subscribed it before the other, being then in a calm, sober posture; but the other he deposed after my adversaries had been a whole day tampering with him at the Bear in Reading, and possessing him with prejudice against me; which he openly shewed in the court by bitter expressions, and by those circumstances in the former deposition, which tend to blast the gentleman's good name and reputation.

"But for further satisfaction, 1. I refer you to my Answer; in which I have largely shewed the reasons of her private retirement there, which may in justice clear me from that undeserved aspersion my enemies have cast upon me.

"2. Consider that this, as to me, is no legal proof of any crime, but a mere circumstantial thing, brought to raise suspicions and prejudices against me, being but of the nature of a libel, and so unfit to have been received into a judicial court: for whose name and reputation may not be blasted, if such libellous illegal things, so long past, should be received into courts of judicature as accusations to condemn them?

"Though that crime, which my accuser would render me suspected for by this circumstantial deposition, had been ever so clearly proved, yet the date of it (being nine or ten years since) had put it quite out of the cognizance of the commissioners, not only by the Act of General Pardon, but also by another law, made particularly by the parliament in reference to things of this nature, which takes away all legal guilt from any persons that are not accused within a year after the commission of any such crime; besides, the act to which the commissioners are confined, as their rule to judge of scandal, was made many years since. Therefore, I say, they neither had nor have power to take a business so long past, though otherwise ever so criminal, into their cognizance.

"But notwithstanding these things, the commissioners sent a summons for Mrs. Flavel, though they had no positive charge against her; and after her appearance, would have forced an oath upon her, and examined her to questions concerning herself. But she, as in justice she might, refused to answer them, alledging, That if any one durst lay any positive crime to her charge, she would answer by the mouth of her lawyer. Whereupon the commissioners threatened to send her immediately to prison, though they durst positively accuse her of nothing."

*Art. 33.* 'That he is a very ignorant and insufficient man for the work of the ministry.'

*George Hastlett*, of Bradfield, weaver, sworn and examined, deposed, That he heard Dr.

Pordage in a sermon, in the church of Bradfield, about two years since, deliver, That it was a vain thing to trust in the blood of him that died at Jerusalem 1600 years since, or more, unless it were acted in me, or in thee; for that was but in the type, the substance must be fulfilled in us: And that Christ must be crucified in us, we must have the Jews and Pilate to put him to death in us; otherwise it was a vain thing to believe in him that died at Jerusalem 1600 years since without us.

"*Note.* As I own and embrace the historical birth, life, death, and resurrection of Christ without us, with the blessed effects of them, clearly held forth in the gospel; so do I also believe the mystical birth, death, and resurrection of Christ in us, according to the scriptures, Matt. xii. 50. Gal. iii. 1. Ephes. ii. 5.

"And to say that both these are necessary to be known, at least experimentally enjoyed by all that will be saved; and that it is vain to depend upon the first, without some sense and feeling of the last, as it is to depend upon a notional justification without a real sanctification: I say, to aver this, is not against, nay, altogether according to the holy scriptures; 'For we know that Christ Jesus is in us, except we be reprobates.' And if we have not his spirit, we are none of his."

This deponent further saith, That the said Doctor, about a month since, in Bradfield church, did deliver, That doubtless the apostles by that text, 'Know you not that your bodies are the temple of the Holy Ghost?' did not mean these earthly bodies.

"*Note.* I never denied our elemental bodies to be the mediate temples of the Holy Ghost, but the immediate: For the immediate temple of the Spirit is the image of God in us, which is renewed in righteousness and true holiness, and may truly be called the body of righteousness and life, in opposition to that body of sin and death, Rom. vii. 24, which hath many members, Coloss. iii. 5, being the evil corrupt inclinations and habits of the old man. This inward body, which is the immediate temple of the Spirit, is called, Rev. xvi. 15; our garments, which we are exhorted there to keep, lest we walk naked; and the armour of light, Rom. xiii. 12, which we are there commanded to put on, in opposition to the works of darkness, which we are to cast off. This may also be called our pure flesh, in opposition to that sinful flesh spoken of, Rom. vii. 18. And as in the last there dwells no good thing, so in the first nothing but good, being it is the immediate tabernacle of the Holy Ghost, Joel ii. 28. 'I will pour out my spirit upon all flesh.'"

And this deponent further saith, The Doctor did deliver, that by the text (Gen. xviii. 19, 'I know him, that he will command his children and his household after him,' &c.) was not meant the outward household of Abraham, but his inward household, his will and affections, which he was lord paramount over; and he quoted that text in the last of Joshua, 'As for me and my house, we will serve the Lord,'



which he likewise said was the inward house, and not the outward. This was about two years since, as far as this deponent can remember. And the deponent saith, He judged the same contrary to the mind of the Holy Ghost.

“*Note*, Had the commissioners allowed me so much time as to have brought in what evidence I could against this man’s deposition, I should have proved, that in the tenour of my ministry I never denied or rejected the historical or literal sense of the scriptures, for which there can be no just ground; but that I have usually joined the literal and allegorical interpretation together, even as Paul doth, Gal. iv. 24, 25, 26. which sweetly united, cannot but make an amiable harmony. And the deponent mistakes, in saying I excluded the history; for I had before opened it in the plain historical sense, and afterwards came to open it mystically, in making a spiritually moral use of those scriptures, in applying them to the work of God upon the inward man.

“Let the reader further know, that the commissioners could not in justice take this as evidence against me, because it was all brought the very day of my Sentence, I having no time allowed me to make my Defence by the testimonies of some others that constantly hear me, who might have certified this deponent’s mistakes, in misrepresenting both my words and meaning, by shewing I excluded not the literal meaning of the texts produced. 2. In regard I objected against him as a drunkard, and so an insufficient witness. 3. In that there was no concurrent testimony. 4. In that he wrote not this down, and so could not exactly deliver so much word for word, as I spake it, especially so long after some part of it was delivered, and so by a little mistake might prevaricate my sense and meaning.”

This deponent further saith, That Goodwife Knap told him about a month since, that she being at the Doctor’s house, Mrs. Flavel was very angry with her, and threatened to have her whipt, for saying the child Hannah was Mrs. Flavel’s child; and that she then denied she had any other child except Stephen her son. And that when the said Goodwife Knap denied she had said any such thing, and began to be outrageous, both old and young Mrs. Pordage desired her to be pacified, saying, happily it might be another woman might speak so.

“*Note*, The woman here mentioned hath under her hand, before witness, denied what the deponent here relates of her; so that either the deponent is perjured, or this woman ashamed to stand to so gross an untruth, as the deponent pretends she related to him. But the Sentence being given the day in which this deposition was taken, I had not time to bring this woman face to face, to the deponent, so to see where the guilt of perjury, or a lying slander lay. Though as to the strength of this testimony, there was no such thing necessary, it being a mere hear-say.”

*Art. 34. The Testimony of Richard Sawood, who was neither sworn nor examined in public Court.*

I came into Bradfield Parsonage in the evening Sept. 9, 1650, and there I heard a very mournful cry, as if it had been one in extreme pains; but who it was, I knew not, for it continued all the time I was at the door, which was well near a quarter of an hour; and so it continued when I went away. And then on the tenth day in the morning I came to Mr. Francis Pordage, at the Parsonage of Stanford-Dingley, and he enquired of me, what I did think of the noise that I heard? I told him, I could not tell. Then he related to me, that the Lord was about a great work in this kingdom, and to this nation. And the cause of this cry was one in travail, and the pains were so extreme, that had I staid there but a little longer, I might have heard it as far as the town; but now she was delivered of a man-child, and the travail was at an end, and that he and others were witnesses of it.

Mr. Pordage, Minister of Stanford Dingley, sworn and examined to the former Deposition of Richard Sawood.

This deponent being asked, Who it was that was in travail of the child in the said deposition mentioned, and what became of it? To this question he answereth, that it was one Mrs. Flavel. And he further saith, that above four years since, Mrs. Flavel was very earnest in prayer, on a day when they were fasting; which was at the time when one Sawood came to the door: the said Sawood knocking, the deponent went to the door to him. And he saith, he doth acknowledge that Richard Sawood did come to him (about the time mentioned in the examination of the said Sawood) to the Parsonage of Stanford; and he saith, it is probable he did ask the said Sawood, what he did think of the noise he heard in the Doctor’s house the day before? And that when the said Sawood answered to this foregoing question he could not tell, it is very probable the deponent did relate to him, that the Lord was doing a great work in this kingdom, and to this nation; and doth confess, that unadvisedly he told the said Sawood, that the cause of the foresaid cry was one in travail; but doth not remember he spake any such thing, as that the pains were so extreme, as that, had he staid longer, he might have heard it as far as the town: but doth confess, that he said she was in travail of a man-child, and that he and many others were eye-witnesses of it.

And being asked who it was that was in travail? he answered, Mrs. Flavel. And being further asked, what became of this man-child? he answereth, It was the birth, death, and resurrection of Christ, in her nature. And being asked, How the birth, death, and resurrection of Christ in the nature of Mrs. Flavel was so great a work that God was doing to this nation? he answereth, he never said any such thing. And being further asked, whether himself (be-

ing demanded what this man-child was) did not answer, The child of reformation? to this he answered negatively.

He further saith, That this travail of a man-child was not any natural birth of a child out of the womb; but the cry that was then made was nothing else but the groanings and intercessions of the spirit in her prayer.

“Note, This last part is the real truth of the business, which I could have proved by many witnesses more, who were present in my house at the time, and whom I had ready before the court, to attest upon oath, that there was no natural travail, nor any natural birth, nor any such child born; but only the gentlewoman was then very earnest in prayer. But this was thought superfluous, being that the deponent Mr. Pordage, from the mistake of whose discourse this came to be made an Article against me, cleared the business himself by oath. But how my name hath suffered from this groundless business, is known very well, both to my friends and enemies; some of which, as the accuser Mr. Fowler for one, in open court, scoffed at me, threatening to prove great things against me from this deposition of Sawood’s.”

To the 35th and 37th Articles:

Mr. John Tickle of Abingdon, sworn again, and further examined, deposeth, That a summons being issued for the appearance of Susanna Day, the messenger went for her, and met with her on Tuesday night last, being the 5th instant, at the deponent’s house, and that she was willing to come, and could not in regard of her distemper at present: but the said Susanna having reported to several people in Abingdon, and particularly to the deponent’s wife, that she was at Dr. Pordage’s house, and that the people there told her her eyes were opened, and she said she saw at that time the New Jerusalem to come down from heaven all of precious stones, and so on, according as in the Article.

The said Susanna told the deponent on the said Tuesday night, That the last time she was at the Doctor’s house, she saw the New Jerusalem to come down from heaven, a city four-square, with borders and precious stones. And being asked, whether it was not her fancy only? she answered, she saw it really.

The deponent saith, That he asked the said Susanna, whether she saw any angels in the Doctor’s house? To which she answered, No. But she said the Doctor’s daughter did see two angels holding a golden crown over her head.

Thus have I finished this last Charge of Articles, being in number 37. Of these, 21 were passed by without any depositions brought to prove them; and of those Articles to which somewhat was said to prove them, most part was attested but by hearsays and reports from others; as the depositions of Mr. Fowler the accuser, of Mr. Woodbridge, Mr. Tickle, and John Crip clearly shew; which cannot be accounted to much as concurrent testimonies, being they are not any way testimonies in law. The rest were attested but by a single witness

(except those of visions and apparitions, which I acknowledged myself, and which are no way criminal, nor under the cognizance of those Commissioners, viz. Mrs. Grip, who in her testimony is not wholly positive, though she did swear very desperately to two or three of the Articles; the particulars of which are no way included in the act of scandalous opinions, as to their nature or time: for as to the last, I was so far from being accused within six months after the pretended speaking those words, as it was four years before they were alleged against me. Besides, this woman speaking an untruth upon oath, was really perjured, and had been so proved, had I had just dealings from the Commissioners; whence in equity her testimony is to be accounted invalid, as in law it might have been, had my witnesses been but examined, who were ready to prove it.

Now as to that Article of Ignorance and Insufficiency, I have before shewed, That the depositions of George Hastlet, brought to prove it, cannot in justice and equity weigh any thing to condemn me, for the reasons before expressed.

And now let the reader consider, whether Mr. Fowler was not very rash to proclaim in the open Court at Newbury, That if he did not prove the greatest part of these Articles, he would be accounted a slanderer. Which title, whether he deserves or not, I leave to the judgment of the judicious reader.

But to proceed: The depositions on both sides being ended, I presented into the hands of Mr. Dunch the Chairman, this following Protestation, to be read publicly before the Court and the people; but they privately consulting of it, would not suffer it openly to be read, but suppressed it, as before they did Mr. Blagrove’s letter.

My Protestation was this:

I, John Pordage, do solemnly avow and protest, before the all-seeing eye of Almighty God, That I do maintain, hold, and embrace these following principles of Divine truth, as my real and avowed judgment.

1. That there is a Trinity of persons in the Unity of the Divine essence, viz. The Father, Son, and Holy Ghost, distinct from each other.
2. That Christ is God, co-eternal, co-essential, and co-equal with the Father, and therefore Jehovah.
3. That Christ is a perfect Saviour and Redeemer of his Church, and so more than a Type.
4. That Christ’s righteousness is a most holy, pure, spotless, complete, and perfect righteousness for the satisfaction of lost sinners.
5. That the blood of Christ is not only redeeming and ransoming, in reference to hell and damnation, but also purchasing in reference to salvation, as having purchased an open gate and way to glorification and life eternal for purified saints.
6. That all arts of necromancy, and black magic, all compacts with evil spirits, whether explicit or implicit, direct or indirect, are unlawful, being against the holy Scriptures, and never looked into or practised by me; but, on

the contrary, abominated, even as they are to be detested and abhorred, not only by all Christians, but by all mankind. 7. That Polygamy, and all such practices that tend to the indulging of the flesh, are contrary to the mind of God, and not to be owned by Christians.

I do moreover disown and reject these subsequent positions, which are contrary to the former principles.

1. As to maintain that there is no such thing as persons in the Holy Trinity. 2. That Christ is not God; that Christ is not Jehovah. 3. That Christ was not perfect, and that he is no more than a Type. 4. That Christ's righteousness is a poor, vain, empty, and snareless righteousness. 5. That the blood of Christ is not meriting and redeeming blood, or that it is a poor thing to live upon the blood of Christ. 6. That it is lawful to have communion with evil spirits, or any compact with them, explicit or implicit. 7. That it is lawful for a man to keep company with more women than one.

Now this most solemn Protestation I make in all humility and reverence before the Divine Majesty, the Omnipresent God, the searcher of all hearts, and from a true intention, without any veil or covering, as I shall answer it at the great day, when the secrets of all hearts shall be revealed. And now if you my judges have not so much as a grain of faith, to believe this my cordial and solemn Protestation; let God, angels, saints, and all here present, bear witness that I have left every one of you inexcusable.

And now having performed what I could, and what I thought myself obliged to do in reference to the vindication of that pure truth I own and live to; I am as ready to receive any Sentence from you, whether of acquittal or ejection, as you are to deliver it.

'Now although the Commissioners would take no notice of this solemn declaring of my judgment, yet it is of great moment, as you may see by that passage in the Ordinance, by which the Commissioners are to act, page 613, where it runs thus: such ministers shall be deemed and accounted scandalous in their lives and conversations, as shall be proved guilty of holding and maintaining such blasphemous and atheistical opinions, &c. In which you see the time present is only respected: what then have the Commissioners to do to judge any for things many years past, though then guilty, as I never was, if now they disown them, and own the contrary as their judgment?'

But to proceed in relating the transactions of the last day of trial: after the particulars before recited, Mr. Dunch the chairman said to me, if Mr. Starkey (being of counsel for me) had any thing to present on my behalf, he might have liberty to speak. Whereupon Mr. Starkey, being desired by me, recited all the evidence, with much acuteness, method, and judgment; shewing, that if they squared their proceedings by the rules of law they were to act by, they could have no ground to give sentence against

me: which he demonstrated so clearly, by enumerating both the testimonies on both sides, and also the particular laws and privileges which freed me from the imputation of any legal guilt; that many, though prejudiced persons, were much staggered, doubting of the issue in reference to sentence. But after this speech, we were all commanded to withdraw; and about an hour and a half after, we were called in again, and the register was commanded to proceed to publication. Whereupon all the depositions on both sides were read; which being done, Mr. Ford was ordered by the Commissioners to make a speech in justification of their intended Sentence against me; which office he performed as wretchedly, as he undertook it willingly, misrepresenting the evidence with confused paraphrases and mistakes, labouring to refute the law of my counsel's speech, with such assertions as these, viz. That although many of the proofs brought against the Doctor, were not proofs according to law; yet to the Commissioners, who are a court of equity, and of an ecclesiastical jurisdiction, and so not obliged to judge according to positive laws and statutes, they were, and might be esteemed sufficient proofs.

'Many such speeches as these he used, contrary to the liberty of the subject, the rule of reason and scripture, endeavouring to persuade the people, I was as monstrous as he and some others had represented me in their pulpits and discourses; but I shall say no more of him and his speech, leaving them both to the righteous Judge of all things, who one day will justify whom he and others of his way have condemned.'

After this speech of Mr. Ford's was ended, I desired liberty of Mr. Dunch, the chairman, to speak something to the people, in reply to some things Mr. Ford had untruly said against me: but it would not be permitted.

Then I desired them to receive in this my last request, and to weigh it seriously, before they proceeded to Sentence; which though it was returned into my hand again before it was read, I shall here present, for the satisfaction of the judicious reader.

Gentlemen! Before you proceed to judgment and pass sentence, I desire you seriously to consider these subsequent particulars.

1. That I was according to law acquitted of that Charge attested by Mr. Tickle, whence I produced my Discharge before you, which according to the judgment of judicious lawyers is undoubtedly legal, and will hold good, notwithstanding all pretensions to the contrary.

2. That the matters of the same Charge are acknowledged by the witness to have been spoken a year before that act was made, intitled, An Act against several blasphemous atheistical opinions, to which the Commission refers, as the rule to judge of scandalous opinions, which make a distinct head from matters of ignorance and insufficiency, according to the tenor of the commission.

3. That the same act cannot take into cogni-

zance any crime for which the offender was not accused within six months after the committing of it; therefore nothing in either the first or last charge that hath been any way proved, can be judged as an offence against that act.

4. In reference to my third or last charge, there hath been nothing directly proved against me; but some words and expressions dropt from me in a private discourse to one single witness: which expressions, as you see, are capable of a harmless interpretation, being never owned in that sense the witness took them, as my avowed judgment, but solemnly disowned, as contrary to it, and therefore incapable legally to prejudice me; for the former act doth not make one an offender for a word, but for avowedly maintaining or holding forth in words or writing, any thing there prohibited.

5. That in reference to those words in both my charges, which have been any way proved to have fallen from me, I never owned them as my judgment, in that sense my accuser takes them; but have openly denied and disowned them; which therefore cannot render me guilty, either by the law of that former act, or by the Law of Scripture, which denounceth judgment against those who make a man an offender for a word, Isa. xxix. 20, 21, which deserves your consideration.

6. That the particular Articles both of my first and last Charge, that seem to be of worst consequence, cannot justly be brought within the cognizance of that act, according to the literal and genuine scope of it; being chiefly made against the principles and practices of those called Ranters.

7. That nothing of scandal in life and conversation being proved against me, my free owning and confessing the appearance of evil spirits for some time in my family, permitted by God, opposed and overcome by the Christian weapons of prayer and fasting, ought not in equity to prejudice any against me, so as to sway them in their sentence or judgment; I having cordially, solemnly, and sincerely protested my innocence, as to any communion or compact with evil spirits: and that you would consider that things of this nature, though criminal, are not under the cognizance of the act, but to be tried by the common law, according to the usual custom of this nation.

8. That the act of general pardon doth clearly take away all legal guilt from things done or spoken before 1651, that are not excepted in the said pardon. Now the particulars of my first charge, and all those of my third or last, which seem to be of moment, and to be any way proved, were spoken or done before the year 1651. Now this being the positive judgment of able lawyers, who have seen it experienced in things of more dangerous consequence, may give you the Commissioners sufficient ground of serious reflections upon it.

9. That (according to the judgment of wise, judicious, and knowing men, your Commission

having been long since, and being now again under consideration and debate, whether to be confirmed or altered) you the Commissioners in the interim have not compleat power to act, especially in reference to sentence, judgment, and execution: which I believe is the reason why so few of the Commissioners have sat, and why others that were at first so earnest in their proceedings, have since withdrawn themselves.

10. That in reference to judgment and sentence concerning me, scandal ought to be preserved as an absolute distinct head from ignorance and insufficiency, according to the letter of your Commission, and the undoubted judgment and intent of the authors.

11. That the testimony of any one, though by oath, concerning what another related to him touching a third person, (i. e. the defendant) is no proof at all according to law, being not so much as concurrent testimony, if the defendant deny it, and do not own it himself; moreover, that the testimony Mr. Fowler gave, is not legally valid; because, besides the former reason, he is the accuser, and incapable to be witness, according to law.

12. That in the day of sentence, Mr. Dunch and Mr. Trappam cannot by law sit as judges, because they condemned me long before proof; threatening me before witness, to turn me out of my living, at the sitting of this parliament; and the last was a witness against me. That Mr. Fowler, Mr. Woodbridge, and Mr. Tickle, cannot by law sit as assistants to the judges, or give their votes in the day of sentence; the one being my accuser, the other two witnesses against me.

After I had delivered this to be read, and had received it again, we all withdrew; and about two hours after were called in again: when the room being full of people, one Mr. Lee a minister, the gravest man amongst them, began a very formal speech to me, in which he very rhetorically expressed what a grief and trouble it was to them to pass sentence against me, and that he durst not judge that I ther was guilty of holding those monstrous tenets I was accused of; yet they must proceed 'secundum Allegata et Probata.' Afterward he proceeded to give me many exhortations and secret reproofs, in which he, with much artifice, made me guilty of all I was accused of. Whereupon, after I had heard him for a pretty space, being very sensible of his disguised prejudicing discourse, and his design in it, I was forced to stop him, by replying, that if he had any brotherly exhortations to give me, he might come in private with me: but thus to pretend to admonish and exhort me, yet really to represent me as guilty of all I was accused of, and that before the people, was the custom of the Scribes and Pharisees, who were wont to hide foul designs under fair colours, witness their dealings with Christ. Whence I desired him to spare his admonitions, and to leave off twisting such silken halters, saying, I was prepared for sen-

tence, and that I desired him and the rest to take heed of condemning and betraying the innocent. Upon this, the man being struck somewhat silent, Mr. Dunch the chairman commanded the register to do his office; who presently read the Sentence of my ejection in the open court, which was then very brief, though afterwards enlarged with many circumstantial aggravations, and great untruths, is this following copy sent to me from the clerk, on the next day after my sentence, clearly shews

*Be it*, &c. By the Commissioners appointed by Order of his Highness the Lord Protector and his Council, for ejecting of Scandalous, Ignorant, and Insufficient Ministers and School Masters. Reading, Dec 3, 1654.

Whereas several Charges have been exhibited to us against Dr. John Pordage, rector of Budbith in this county, who hath given in several Answers in writing therunto, and therupon we have proceeded to examination of several credible witnesses upon oath, for proof of the said Charges in open court, which witnesses the said Doctor hath been permitted fully and freely to cross-examine: and the said Doctor hath been required to produce his witnesses for his justification, and to bring in his interrogatories, upon which he would examine his said witnesses, and hath had day after day assigned him for that purpose, but notwithstanding hath peremptorily refused so to do, persisting in his own way, and refusing to observe our direction in his proceeding; and hath publicly, by his evil and contumacious expressions, slighted and affronted the said Commissioners, and instead of producing his interrogatories in writing, according to our order, he hath now verbally offered several questions, which he desires to have propounded to several of his said witnesses, which the Commissioners (upon consideration of) have judged impertinent to clear him from the matters charged against him, but merely to delay and weary out the said Commissioners, and therefore they have examined only to two of the said questions, which they conceive might somewhat tend to his justification: and upon full hearing what the said Doctor could say, and Mr. Sturkey, of counsel in his behalf, upon the whole matters, and upon due consideration, it appeareth, that the said Doctor is guilty of denying the deity of Christ, and the merit of his precious blood and passion, and hath asserted and maintained, that Christ was a Type, and but a Type, and not perfect, and that his imputative righteousness was sapless, and several other hellish opinions, and is otherwise scandalous, as by the said depositions may more fully appear. And it is likewise declared under the hands of six of the said commissioners, and several ministers their assistants, that upon the matters proved against him, the said Dr. Pordage is ignorant, and very insufficient for the work of the ministry. It is therefore ordered, That the said Dr. Pordage be, and he is hereby ejected out of the rectory

of Bradfield aforesaid, and profits thereof; but the said Commissioners do grant him time to remove himself, family, and goods and chattels out of the said Parsonage-house, till the second of February next, and further time to remove his corn out of the Parsonage-barns, till the 25th of March next.

(A True Copy) MAT LANGLEY, Register.

Neale writes at some length of the proceedings in Ecclesiastical Matters during the usurpation. After giving an account of the ordinances appointing the Commissioners for Examination of Ministers (they went by the name of Tryers) and regulating their proceedings, he says, "But to humble the Clergy yet further, and keep them within the bounds of their spiritual function, his highness, by the advice of his Council, published an Ordinance, bearing date Aug. 28, 1654, entitled, 'An Ordinance for ejecting scandalous, ignorant and insufficient ministers and school-masters.' The Ordinance appoints, and nominates certain Lay Commissioners for every county, and joins with them ten or more, of the gravest, and most noted Ministers, as their assistants, and empowers any five, or more of them, to call before them any public preacher, lecturer, parson, vicar, curate, or school-master, who is, or shall be reputed ignorant, scandalous, insufficient, or negligent, and to receive all Articles or Charges, that shall be exhibited against them on this account, and to proceed to the examination and determination of such offences, according to the following rules

"Such ministers and school-masters shall be accounted scandalous in their lives and conversations, as shall hold or maintain such blasphemous, or atheistical opinions, as are punishable by the Act, entitled, 'An Act against several blasphemous, and atheistical opinions, &c.' or that shall be guilty of profane swearing and cursing, perjury, and subornation of perjury; such as maintain any popish opinions, required to be abjured by the oath of abjuration, or are guilty of adultery, fornication, drunkenness, common haunting of taverns, or ale houses; frequent quarrellings or fightings, frequent playing at cards or dice, prophesying of the Sabbath; or that do allow and countenance the same in their families, or in their parishes. Such as have frequently read, or used the Common Prayer Book in public since the first of Jan. last, or shall at any time hereafter do the same. Such as publicly and profanely scoff at the strict profession, or professors of godliness. Such as encourage or countenance Whitson-ales, wakes, morrice dancing, may-poles, stage-plays, or such like licentious practices. Such as have declared, or shall declare by writing, preaching, or otherwise publishing, their disaffection to the present government.

"Such ministers shall be accounted negligent as omit the public exercise of preaching

‘and praying on the Lord’s day (not being hindered by necessary absence or infirmity of body); or that are, or shall be non-residents: Such school-masters shall be accounted negligent as absent themselves from their schools, and wilfully neglect to teach their scholars.’

‘Such ministers or school-masters shall be accounted ignorant and insufficient as shall be so declared and adjudged by the Commissionrs in every county, or any five of them, together with five of the Ministers mentioned in the Ordinance.’

‘The Lay-Commissioners were to proceed upon oath both for and against the person accused; but in cases of ignorance or insufficiency, they were to be joined by five of the assistant Clergy at least; and if ten of the Commissioners, whereof five to be Ministers, gave it under their hands, that the party was ignorant or insufficient, then the said minister, or school-master was to be ejected, and the said judgment entered in a register book with the reasons thereof. After ejection the party might not preach or teach school in the parish from whence he was ejected; but convenient time was to be allowed for his removal, and the fifths reserved for the support of his family. The rightful patron was to present to the vacant living an approved preacher; and in case of lapse it fell to the Protector and his Council.’

‘This Ordinance being confirmed by the parliament of 1656, gave great offence to the old clergy; Mr. Gatford, the sequestered rector of Dennington, published a pamphlet, entitled, ‘A Petition for the vindication of the public use of Common Prayer, &c.’ occasioned by the late Ordinance for ejecting Scandalous Ministers; as also thirty seven Queries concerning the said Ordinance; which he presented to the parliament, which began Sept. 3, 1654, but they took no notice of it.’

‘Mr. Gatford observes, That the Protector and his Council had no legal authority to make this, or any other Ordinance, without consent of a parliament; whereas the Instrument of Government empowered them to provide for the safety of the state by making laws, till the parliament should meet. He observes further That such a preceeding must justify his late majesty and council in all their illegal proceedings before the civil wars; that it would justify the High Commission Court; and, that by the same authority, an ordinance might be published to eject freeholders out of their estates.’

‘He complains, That the power of the Commissioners is final, and admits of no appeal; that looks back to crimes antecedent to the law for a twelvemonth; whereas it ought only to

declare, that for the future such offences shall be punished with deprivation.’

‘That the Commissioners who were to sit in judgment upon the clergy were all laymen, the ministers being called in only in cases of ignorance and insufficiency; that the ordinance admits of the oath of one witness, provided it be supported with other concurrent evidence, which is contrary to the laws of God and man.’

‘That some crimes in the Ordinance were none at all, and others of a very doubtful nature; as, how often a minister omitting to pray and preach in his pulpit should render him negligent; and what shall be deemed non-residence. Above all, he complains that the public reading of the Common Prayer should be ranked with the sins of swearing and drunkenness, and be an evidence of a scandalous life and conversation; which observation was unquestionably just.’

‘To give the reader an example or two of the proceedings of the Commissioners: Those for Berkshire summoned Dr. Pordage, Rector of Bradfield, to appear before them at Speenham Land, near Newbury, to answer to divers articles of blasphemy and heresy. After several days hearing, and witnesses produced on both sides, the Commissioners determined Dec. 8, 1654, that the said Doctor was guilty of denying the Deity of Christ; the merits of his precious Blood and Passion; and several other dangerous opinions. It is further declared under the hands of six of the Commissioners, and a sufficient number of Ministers their assistants, that the said Doctor was ignorant, and insufficient for the work of the ministry; it is therefore ordered, that the said Doctor be, and he is hereby ejected out of the Rectory of Bradfield, and the profits thereof, but the said Commissioners do grant him time till the 2nd of Feb., to remove himself, his family, his goods and chattels, out of the said Parsonage house; and further time to remove his corn out of the barns, till the 25th of March.’

The Oxford Historian says, this Pordage was a Dr. by Charentismus, and had been preacher of St. Lawrence Church in Reading before he came to Bradfield. That he was a mystic enthusiast, and used to talk of the fiery deity of Christ dwelling in the soul, and mixing itself with our flesh. He dealt much in astrology, and pretended to converse with the world of spirits. After his ejection he writ against the Commissioners a pamphlet, entitled, ‘Innocency appearing;’ which was answered by Mr. Christopher Fowler, vicar of St. Mary, Reading, in his ‘Demonium Meridianum.’ However, the Doctor was restored to his living at Bradfield at the Restoration.”

197. Proceedings of the Commissioners,\* appointed by Oliver Cromwell, for ejecting scandalous and ignorant Ministers. In the Case of WALTER BUSHNELL, Clerk, Vicar of Box, in the County of Wilts: 8 CHARLES II. A.D. 1656.

THIS Narrative was published by Bushnell presently after the Restoration with the following Preface, and a Dedication to Sir Anthony Ashley-Cooper and John Larnly, esq. knights of the shire for Wilts, dated July 4, 1660

*To the Readers.*

Whom I shall pre caution in some few things As 1. When they meet with the word Commissioners, they are not to understand me, as intending thereby all those gentlemen whose names were put into the Ordinance, as charging them with those unworthy and unjust proceedings. Many whereof, (as to my business,) never acted: yet further I desire them to know, that some of those who sometime acted, I do hereby acknowledge and report for gentlemen of much civility and moderation. But the Commissioners and ministers which I here speak of, are those that made ejecting of ministers a kind of trade. And questionable to themselves it was a very bene

\* "The Wiltshire Commissioners summoned Mr Walter Bushnell, Vicar of Box, near Malmesbury, before them, to answer to a charge of drunkenness, prophanation of the Sabbath, gaming, and disaffection to the government, and after a full hearing, and proof upon oath, they ejected him. The Vicar prepared for the press a Narrative of the Proceedings of the Commissioners appointed by Oliver Cromwell for ejecting Scandalous and Ignorant Ministers, in the case of Walter Bushnell, &c. but it was not printed till the King's Restoration, and even then the Commissioners did themselves justice in a reply, which they called, A Vindication of the Malmesbury Commissioners, by the Commissioners themselves. And Dr Chambers, who was reproached by the said Bushnell, did himself justice in a distinct vindication. However, the Vicar was restored to his vicarage in a lump, with the rest at the Restoration.

"Upon the whole, the industrious Dr Walker says, he can find no footsteps of the numbers of clergy that were ejected by the Commissioners, though he imagines they might be considerable. But I am well satisfied, there were none of any character; for there were not a great many zealous loyalists in possession of livings at this time; and those that were, had the wisdom to be silent about public affairs, while they saw the eyes of the government were upon them in every corner of the land. The Commissioners continued to act for some time after the Protector's death, and were a greater terror to the Fanatics, than to the regular clergy of any denomination." † Neal's Hist. of the Puritans, p. 103.

ficial one such who were constant, and frequent, and furious in the business, and were these, Mr. Blisset, Mr. Thomas Bayly, Mr. Hunt of Marlborough, and of the ministers, Dr Chambers, Mr Byfield, and one of Marlborough, I think they call him Mr Hughes. Understand me to mean these especially; when you meet with any hard words uttered against the Commissioners, I say especially, for although some others acted to my prejudice, yet because they never appeared but once, and then, as it was conjectured, upon the solicitation of these men, according to whose influences they acted, I shall for the present, only point to them in the margin.\*

And these respective persons I shall charge, and make good this charge upon them. 1. The Ministers that they were ever meddling with this, which they had nothing to do with. And 2. The Commissioners for often violating that Ordinance by which they sat, and according to which they were to act, and that in many particulars. As in admitting and countenancing such to swear, (if they appeared against me) which that Ordinance excepted against. In excluding such witnesses, if appearing for me, yea, after they had been sworn, which by that Ordinance they were to admit of, and at last making a peremptory order, that such as would might appear against me, but no more in my behalf. I charge them again for endeavouring to suppress many informations which were taken upon oath, and discountenancing, interrupting, and thwarting with many witnesses, who would have deposed to the infamy of their witnesses. And their clerk, Mr Blisset's son, I charge for entering many depositions by halves for confounding the order in which they were taken, for shuffling up two depositions into one, for leaving out very material clauses, which might have been to my behoof, for endeavouring to insert such words which the deponent never spoke, which might have been to my prejudice; for leaving out in his copy delivered to me, a whole, yea a very material deposition, notwithstanding he had formally taken it, together with the subscription of the deponent. and I charge them all, Commissioners, Ministers, Clerk, for countenancing and encouraging infamous persons, such who had forsworn themselves, and touching some of themselves, in their hearing. Such as appeared out of malice by their own confession, and were proved guilty of suborning, and of being suborned, to

\* Mr. Ludloe of Claringdon. James Hely of Sarum.

their faces : Yea, and such as we should have proved guilty of forgery likewise, had not these commissioners and ministers by a notorious piece of injustice prevented it : So that possibly the readers may say, that they have met with a story somewhat like to that of Naboth. Such Judges, such witnesses, such a sentence, and such a malefactor : The judges, although most unjust, yet pretending not only to justice, but piety likewise. The witnesses most infamous, and yet countenanced and made use of by these judges, although they knew them to be such. And, although the sentence be not altogether the same, yet, the malefactor's crime being either the witnesses malice, or else that he held something which they were sick for. These things being premised by way of caution, I take my leave.

GUALT. BUSHNELL.

Thou shalt not raise, or receive a false report, Exod. 23. 1.

Si falsis testis perit qui injuratus testimonium dicit, Deut. xix. 16, and 21. Quid nostris, qui jurati testimonium dicunt, fiat ? Et si falsus testis perit, quid judici iniquo obveniet ? Cartw. in Prov. xxi. 28.

The TRANSACTIONS at the time when first I appeared before the Commissioners sitting at the Bear in Marlborough. February 14, 1655-6.

Sect. 1. By virtue of an Ordinance of Oliver called the Protector, and his Council, intituled, An Ordinance for the ejecting of scandalous, ignorant and insufficient ministers and schoolmasters, bearing date Aug. 29, 1654, wherein certain Commissioners with ministers assistant were impowred to proceed according to several instructions therein specified, as by the said Ordinance, whereunto for further satisfaction I refer thee, appears : I was by warrant from Marlborough delivered unto me by Tho. Cox, bearing date Jan. 21, 1655-6. under the hands and seals of Tho. Bayly, Tho. Hunt, Gabriel Martin, William Shute, William Blisset, and Richard Phelps, summoned to appear before the said commissioners at Marlborough on the 14th day of February then next following in these words.

*Wills*, By the Commissioners for the ejecting of scandalous Ministers, &c. sitting at Marlborough, this 21st day of January 1655-6.

These are to will and require you Walter Bushnell clerk, minister of Box, to make your personal appearance before us at the sign of the Bear in Marlborough, upon Thursday come three weeks, the 14th day of Feb. next coming, to answer to a Charge of Articles, purporting matter of Scandal and Insufficiency, before us this day exhibited against you. Hereof fail you not at your peril. Given under our hands and seals, the day and year abovesaid.

To Walter Bushnell clerk, these.—On the outside, Mr. Bushnell of Box.

Sect. 2. Which personal appearance I accordingly made, and after I had waited till about eight of the clock at night, I received a copy of the Charge in these words.

*Wills*, ss. A Copy of the Charge against Mr. Bushnell, exhibited January 21, 1655-6.

1. That the said Mr. Bushnell is guilty of profaning the Sabbath day.

2. That he is guilty of frequenting Inns, and Alehouses, and drinking to excess.

3. That he useth the form contained in the book of Common Prayer, and baptizeth with the sign of the cross.

4. That he is guilty of playing cards and dice.

5. That he is guilty of several attempts by him made on his servant woman to have committed uncleanness with her.

6. That he hath expressed his disaffection to the present government, in associating himself with several persons who were chief actors in the late insurrection.

Ex. per me William Blissett.

To these Articles I pleaded Not Guilty, which I subscribed at the foot of them, adding further to Mr. Shute, and Dr. Chambers (the only persons that to my knowledge I had ever seen before) that if those Articles were true, then was I notoriously scandalous ; but if false, then were the informers notorious slanderers, or words to that purpose. To which Dr. Chambers replies to this purpose, That the several parties should be brought face to face. So that waiting only for a copy of the Articles, for which I gave the clerk, (Mr. Blisset's son) 2s. 6d. I was at that time dismissed until further summons.

Sect. 3. Now I must acquaint thee that these Articles were exhibited by one John Travers of Slaughtenford, commonly then called capt. Travers. This trade of information and such unworthy shifts being conceived to be almost all that he had to live by, he being looked on as a fellow merely mercenary, framing complaints against men for no other cause but that he might be hired to hold his peace : and endeavouring to displace ministers, for this reason, that he might have his reward for making room for others to come into their livings. And I make no doubt of it, but that as it was hope of reward which moved him to act, so at first it was indifferent to him from whom he had it. A good crust would have so charmed this Cerberus, that he would not have opened his mouth unless it had been in my behalf. Nor do I make a question of it but that as some reward from me would have kept him quiet, or made him for me, so that he had some promises given him, or somewhat assured him in case he would appear against me. The man whom they have put in my place hath complained of the Charges he hath been at in getting of it ; (one must have 20l. another 10l. another 10l. and 10l. it cost him in such a business) now there is no doubt but that John Travers had his share in



this dividend as well as in the service : Neither can I think that Mr. Sterne would have betrayed him (ask William Blisset the younger, and Tho. Cox how) as he did some others, if John Travers had travelled and swore for him upon his own Charges. And for some such kind of man was he looked upon by Mr. Chambers himself, when he first delivered in these Articles against me; who (as he hath reported) called for the Articles with a purpose to have torn them, because they were exhibited by such a hand.

Sect. 4. And since I have mentioned the Articles, and the person that delivered them in, and the entertainment which they were like to find from Mr. Chambers because they were delivered in by such a hand; let me now tell thee what (as he hath reported it) was the cause which made the Doctor forbear tearing of them, and that was because he saw there the names of many whom he knew, and took to be honest men. And here (for an introduction to the honesty and discretion of the Doctor,) I shall observe this unto thee, that (as I have been told) he observed it, that although there were several names subscribed, yet they were all written in the same hand, from which it must needs follow, that by the Doctor's confession, the whole writing both Articles and hands might be all forged as indeed they were; so that methinks the Doctor hath very much overshot himself in point of discretion, for he looks upon the Articles the more, because subscribed with such and so many names; and yet, 2 he acknowledgeth all the names to be written with one hand, which would have made any sober man the more to have suspected it. But yet the Doctor had an evasion for this, for at my appearing before them at Caln, some of those whose names were subscribed, desired a sight of the Paper that they might know who had thus abused them, which they could not obtain: yet the Doctor (that we might not prove his friends guilty of forgery) endeavours to preserve their reputation with a Salvo to some such purpose, 'That their names were written only by way of a memorandum, that in case they were called upon, they could depose to these Articles, that that might be done without their knowledge.' I think he added, 'That it was an usual course in the proceedings of these Commissioners.' But now I must tell thee, that many of them whose names were subscribed to those Articles, did touching myself first under their own hands, certify to these Commissioners the quite contrary to these Articles, and afterward being before them and sworn, were so far from testifying any thing to the sense of the Articles, as that all they said was to my vindication, all which was industriously declined by the Doctor and his Commissioners, for although there were many of them before them, who said much, yet we have not so much as their names in the Depositions. So that this Salvo of the Doctor's, although with him it be but *glossa ordinaria*, yet is it after the rate of some of such principles who draw

up their Memorandums as they quote Texts and Authors to the quite contrary of their intents.

Sect. 5. But to return to John Travers, the reason which (beside common report which rendereth him such a man) moves me to think in this particular that some feeling would have stopped John Travers's mouth, is this: Sometimes before he delivered in these Articles to the Commissioners, he did several times, and at several houses, Alehouses and others, speak of them, yea and read them to several Companies, which I believe he therefore did, that the report thereof might come to my ears: and that that report might alarm me to make in, and to take some timely course that this storm might be diverted: But now I considering, that he who goes about privately to practise with an Informer, doth first on the matter confess himself Guilty: Next, that he doth reward him for one crime, and thereby encourage him to commit another: I considering again, that such sort of fellows will be no longer quiet than they are fed, and that they have (as strong stomachs, so) quick digestions: Considering again that the crimes which I was charged with, were gross and scandalous, and if true, deserving a greater punishment than Ejection: Considering again that the Commissioners mentioned in the Ordinance were many of them gentlemen of eminent rank, and looked upon as men of discretion and integrity; and considering that the instructions by which these Commissioners were to proceed were such that had they been duly observed, it was almost impossible that a person not guilty should be prejudiced: For they were to examine witnesses upon oath on the behalf of the person charged, and the proof of the charge was to be made by credible witnesses, (the sequel will show thee how they observed or kept to their instructions) being confident likewise of mine own innocence as to those crimes which were there charged upon me, and persuading myself that I should find nothing but justice allayed with equity and candor in my judges, I say, considering these things, I cast myself upon my trial. But now how much I was mistaken in some of these men, how disproportionable their proceedings were to the Ordinance by which they acted, how little justice I found where I expected lawful favour, this ensuing discourse shall acquaint thee. And indeed calling to mind that abundance of godliness which some of these men pretend unto, making that the symbol to difference themselves from other men, and yet observing their actions and proceedings, I cannot but say as Solomon did, Eccl. iii. 16, 'And moreover I saw under the Sun 'the place of judgment that wickedness was 'there, and the place of righteousness that 'iniquity was there.'

The Transactions at my second time of appearing before them at the Antelope in Lavington, April 28, 1656.

Sect. 1. I heard no more of this business

from the 14th of February, 1655-6, until the 24th of April, 1656, at which time there came a soldier to my house and delivered me a piece of paper in these words :

‘ Mr. Bushnell, I am commanded by our Commissioners, to let you know, that they expect your appearance before them upon Monday next, at the Antelope in Market Lavington, where they will examine the witnesses for proof of the Charge against you ; if you intend to make Defence thereunto, you are then to bring your witnesses with you.—New Sarum, March 31, 1656.—Per me, William Blisset, Clerk.—To Mr. Bushnell Minister of Box, these.’

As I said before, I received not this paper till the 24th of April, (for his pains the soldier required and received 2s. 6d.) And notwithstanding I could then easily have absented myself, and justified my non-appearance, both because the Monday next after the 31st of March, on which by this warrant I was to appear, was April 7th, and so elapsed more than a fortnight before the paper came to my hands : as likewise because I had not five days warning before hand, as the Ordinance enjoins. Yet because the soldier told me that the Monday next mentioned in the warrant did not refer to March 31, on which it was dated, but unto the 24th of April on which he delivered it, and so must be April 28th, as also being unwilling to move a question, whether by five days mentioned in the Ordinance were to be understood five days inclusive, or exclusive, I say I being unwilling to make use of such poor shifts, which might rather render me suspected than any way vindicate me, and desiring nothing more than a fair and speedy hearing, I repair to Lavington accordingly : I shall observe this unto thee from the last clause of their warrant, that they command me to bring witnesses for my Defence, when as none had deposed against me, and yet afterward when they had received depositions against me, they rejected whom they pleased of my witnesses, and at last made a peremptory Order, that no more of my witnesses should be admitted, of which more hereafter.

Sect. 2. At this time at Lavington there appeared as witnesses for the Common-wealth (for that was the name by which they were called) William Pinchin, Peter Webb, Thomas Powell, Mary the wife of Henry Workman, and Jane Hendie widow of Box, and Obadiah Cheltenham of Ditcheridge, who being all sworn, were required to speak their knowledge touching the charge against me. I must tell thee that William Pinchin (as I take it before he was sworn) desired to be excused in regard of some near relation of kindred which was betwixt us two ; but this I opposed, knowing it to be a piece of himself ; he I knew for a long time had been the prime contriver of all ; and that the others who appeared there, were there by his procurement ; and that some of them acted according to his instructions. I conceived likewise that this might be to gain the greater opi-

nion from the Commissioners that he seemed thus to hang back (for in such cases forward witnesses, even amongst Heathens, were not so well thought of) and therefore he pretends an unwillingness to that which he most desires ; for I am assured, that he would never have gone about so to excuse himself if he had believed that such an excuse would have been accepted of. Somewhat it was which Mr. Blisset then spake unto him, that he had been, lately sworn before other Commissioners (yea and there he approves himself a valiant knight) which I conceive was spoken either out of wonder, that William Pinchin should now be so calm who was lately so fierce, or else by way of invitation to encourage him to go on.

Sect. 3. But this lundrancy being removed, William Pinchin goes on in these words :

That about eight years since, when Mr. Bushnell came first to Box, he feasted his friends on the Lord's day, and having drank liberally that day there, one Thrift, one of the guests, was killed in the Tower there, but by what means this deponent knoweth not. And saith farther, That he knoweth, that Mr. Bushnell have usually till within this two years frequented alehouses in parish business, and have there drank hard in Mr. Speke's and Mr. Long's company ; and have seen him sit there drinking after they have been gone, but cannot say that ever he saw him drunk. And saith further, That Mr. Bushnell have always baptised infants by the form of the Common Prayer till the last Sabbath day, excepting the sign of the cross.

Sect. 4. Where I shall offer to thy consideration, 1. That although William Pinchin, pretends he came unwillingly to swear, yet we see he comes not unprepared. I shall therefore desire the reader to take some notice of this Deposition, which consists of three parts, answerable to the three first Articles exhibited against me.

1. Profanation of the Lord's Day.

2. Frequenting Alehouses.

3. Using the Common Prayer at the Baptising of Children.

I shall observe something to the touching all these accordingly as they lie in order.

Sect. 5. And first I shall tell thee that whatsoever William Pinchin deposeth touching my feasting on the Lord's day, or drinking liberally on that day, or of the death of John Thrift, he hath only upon conjecture, or else upon hearsay : For he then upon oath acknowledged before the Commissioners, that he was not that day at Box, but at Broughton, which is four or five miles distant from Box, and it is like enough he was there at the Revel, that being their Revel day.

2. He then deposed likewise that this Lord's day was Mid-Lent Sunday.

3. He then deposed, that I preached not that afternoon, imputing it to excessive drinking ; and yet we have not one word of this in the copy of the Depositions which we received from their clerk. Whether it were ever taken, or if

taken, whether *index expurgatorius* hath dashed it out I will not say.

Sect. 6. I must not forget to tell thee, that whilst the Clerk was taking William Pinchin's Deposition, Mr. Byfield did often interpose, as if it had belonged to him, to teach Wm. Pinchin how to swear, and the Clerk how to enter it. Adding, that if he wrote so, or so, it would not amount to a Charge, for that the latter part of it would contradict the former, or words to such a purpose: (No Deposition pleased him but such as had poison in it.) And here I must tell the reader, that this Mr. Byfield seemed wholly to have forgotten both the place and the purpose, for which his name was put into the Ordinance, for by that it is clear that neither Mr. Byfield, nor any other minister, hath any thing to do but only to assist the Commissioners, in their adjudging who shall be accounted ignorant and insufficient; whereas it is well known, that Mr. Byfield intermeddled in the matter of scandal more than all the Commissioners beside. I appeared nine times before them, where Mr. Byfield ever made one; and, when the pipe was out of his mouth, his tongue was seldom silent: but either dictating to the Clerk; encouraging some Witnesses, thwarting with, and threatening and turning back others; thrusting some out of doors, that they might not hear how things past: charging the Clerk that he should give no Copies of the Depositions, making Orders which were for his purpose, reversing others which were not; reading and explaining Acts and Ordinances; concealing some other which were not for his purpose, instructing and catechising some of his Commissioners: Of all which thou shalt have particular instances in the sequel. But now in the business which was properly his Examination, my man was as mute as a fish, for I remember not that he proposed so much as one question unto me. Indeed he hath not been so favourable in that particular to every body: For he hath, as I have been told, pressed a neighbour of mine with a question very earnestly and closely; and wot you what it was? It was (doubtless with Mr. Byfield a fundamental one) "What was the yearly value of his living?" and indeed, when Mr. Chambers preaching at Bath, Nov. 11, 1637, on those words, Joh. xiv. 22, made this observation, That Judas Iscariot proposed no question, but about earthly things, as, What will you give me? Might not this have been sold? &c., I could not choose but think of Mr. Byfield.

Sect. 7. But to return to the Deposition, William Pinchin acknowledgeth himself to be absent, and yet he swears as if he had been at Box. I am not so much a lawyer as to know how far forth an oath will extend, or to what it will amount, if a man depose nothing but what he hath received by hear-say. Amongst the people of God heretofore, the matter was not established, but at the mouth of two or three witnesses, Deut. xix. 15; they could not, if absent, send in their testimony under their hands, and then certainly much less could they give

evidence of a thing which they never knew. In after ages it is reported that they deposed after this sort.

1. They must testify from their own sight.
2. What day of the month such a thing was done.
3. What month of the year such a thing was done.
4. What seventh year of the Jubilee.

And sure enough it is, that whatsoever is deposed in such a case, is no testimony but a report, and so as to the testimony and the witness, it is false, although the thing reported were true. 'Testis falsus est, non is modo qui mendacium dicit, sed qui etiam quod verum est testificatur ejus certam et indubitantem notitiam non habet, id est, testatur quod nec vidit, nec audivit, nec expertus est.' Cartw. in Pr. 21, 28.—I presume they will not dislike my author. He is a false witness, not only he who tells a lie, but he also who testifies a truth whereof he hath not a certain and undoubted knowledge, that is, if he testify that which he hath neither seen nor heard, nor hath had any experience of; which I speak not in any wise by way of granting that to be true which Wm. Pinchin hath informed in this particular; for I shall manifest it hereafter unto thee, that this report is both false and slanderous, but only to evidence thus much unto thee, that be it true; or be it false, yet William Pinchin could be no competent witness of it, because, by his own confession, he was at the same time at another place about four or five miles off. It hath been observed, as a most senseless and imprudent piece of malice in the Chief Priests and Elders, (and indeed malice is always such,) that after consultation they should order it in Sanhedrim, That large money should be given to the soldiers to say, that his disciples came by night, and stole him away while they slept. Matt. xxviii. 11, 12, 13. 'Si dormiant quomodo furtum viderunt? Si autem non viderunt, quomodo fuerunt testes?' Jansen in Concor.—If they slept, how saw they the theft? and if they saw it not, how could they be witnesses? Proportionally say I, if William Pinchin were then at Broughton, it is impossible that he should see it? And if he saw it not, how could he be a witness? Such conjectural reports or informations upon hear-say, I have known to have been rejected by justices of peace, in matter of crimes; and shall such an oath in one case be insufficient to help a man to a shilling, and yet in another case be enough to undo him? And clearly these Commissioners gave me here a taste both of their justice and discretion, as likewise hinted unto me what I was to expect from them, in that they did not only receive such a Deposition as this, from such a man as this; but also set it in the fore-front, and make it the leading Deposition to all the rest.

But now as to some other parts of his Deposition, as to the first Article, William Pinchin swore positively at this time at *Levington*, that the day whereon Thrift was killed, was *Midlent Sunday*, and that I usually kept *feasts*

on that day : Yet at Marlborough afterward he takes a greater latitude, and swears, that he was assured that it was betwixt Candlemas and Easter (it seems he was not assured of what he swore before) whereas upon search in the Register, it was found to be on the 13th of Sept. (which as Mr. Byfield who perused the Register book said) was nothing near it. As I remember it was at this time that Mr. Blisset, to reconcile these clashing oaths, and to strengthen his evidence, said that this mistake was only in a Circumstance, the Time ; and such a mistake is enough to mar the whole Action. 'Malum ex quolibet defectu.' And if circumstances are enough to specify moral actions, then much more divine. Oaths, as they are not to be urged, but in weighty and intricate causes, so they are not to be taken without much deliberation and precaution. He who hath sworn to speak the truth, the whole truth, and nothing but the truth, forswears himself if he speak any more, any thing less, or any thing beside, 'Qui in juramento assertorio aliter dicit quam res est et si in re levissima pejerat.' The least aberration in an assertory oath, makes it no less than perjury. Thou shalt swear the Lord liveth in Truth, in Judgment, and in Righteousness ; in truth, not falsely ; in judgment, not rashly or unadvisedly ; in righteousness, not wickedly. These three are called *Comites Juramenti*, the companions of an oath, without which no oath can be lawful. 'Judicio caret juramentum incantum, veritate juramentum mendax, justitia juramentum ini-quum, seu illicitum.' And yet no less than two of these three hath William Pinchin neglected in his oath ; Judgment, for he swears rashly and unadvisedly, mistaking the Spring for the Autumn, and March or April for September : and that he made as little regard of swearing in truth, as he did to swear in judgment, I am next to tell thee.

Sect. 9. For William Pinchin at this time at Lavington deposed that I preached not that afternoon when John Thrift was killed, imputing it to excessive drinking. Whereas at Marlborough he deposeth, that I had received 6s. 8d. from the widow Hedges for preaching a funeral sermon upon a Lord's day in the afternoon, at the burial of her husband John Hedges. Now it appeared by the Register then in place, and examined, that John Hedges was buried on the self same afternoon of the same Lord's day whereon John Thrift was slain. So that William Pinchin having formerly sworn that I preached not that afternoon, swears afterwards, that I received money for preaching a funeral sermon at the same time. Another circumstance for Mr. Blisset. I could not perceive it, that any of the Ministers took it amiss, that I received such a reward ; (perchance Mr. Byfield looked upon it as a piece of sacrilege that I took no more) but if they had, it would have been testified to their faces, that some of us among them had on a time received three times as much for the like service.

Sect. 1. And now had you seen how William

Pinchin did then look, being thus palpably convicted by himself, and caught in his own net, shall I call it? Perjury : perchance some may say, that according to the ancient notion of the word Perjury as with reference to our Municipal laws it was not so much : or, shall I call it false witness? it was more, because he was sworn, and the rule of the Civil law is, that whoso shall depose any falsehood in testimony, shall be held guilty of perjury. But the reader may call it what he please ; yet of this I am sure, that with God, and in Scripture phrase false swearing and perjury are all one : with Him the crime is the same wheresoever committed ; and as the crime, so doubtless the punishment will be the same : I say had you seen how ghastly William Pinchin then looked being thus surprised, you would have said, that there needed no more to have stopped William Pinchin's mouth from swearing, or the Commissioners ears from crediting him.

Sect. 11. But pass we to the next part of his deposition, which refers to the second Article of Charge against me. And he saith further,

That he knoweth, that Mr. Bushnell hath usually till within these two years frequented alehouses in parish business, and have there drank hard in Mr. Speke's and Mr. Long's company, and have seen him sit drinking there after they have been gone, but cannot say that ever he have seen him drunk.

Sect. 12. Touching which I shall offer to thy consideration.

1. That we have here expressed, that he swears upon his knowledge ; whereas we have not the word in the former part of the Deposition, which may confirm thee, that what he had deposed before, was either upon conjecture or hear-say.

2. Those words, that I have frequented alehouses in parish business, I shall in this sense admit to be true. As often as there were meetings at alehouses, touching parish business, (which was but very seldom) I might frequent them ; that is those meetings there, my interest engaged me thereunto as much as any man's : and that those meetings were there, it was not long of me ; it is well known, that there was a room at the Church-house reserved for that purpose ; which room William Pinchin (it is like) thought not so fit to carry on his contrivances in ; and therefore it might be a design in him to remove those meetings thither, because he was resolved (if swearing would do it) that to that place with safety I should not come. It is well known, that within these few years William Pinchin hath been a great rate-maker, and seldom out of offices ; that he hath brought in large accounts, and in those his accounts it will be made appear that he hath made but little conscience either of honesty, or of his oath.

Sect. 13. The next thing in the deposition is, that I have there drank hard in Mr. Speke's and Mr. Long's company. As touching the first of these gentlemen, Mr. Speke, I shall say, that (as I

have heard) this was not the first time wherein William Pinchin forswore himself, to wrong him. And it is not unlikely, but that this consideration, that Mr. Speke was my patron, (and now he is gone, and so in no capacity either to be pleased or offended with any thing which I shall say, I assure thee, if ever any was such he was to me, *verè Patronus*, a Patron indeed; one who most freely bestowed the place upon me, and I think he never repented that he had so bestowed it;) and I his clerk, that he was loving to me, and I as in duty bound, respectful toward him; might move William Pinchin (a professed enemy 'et Parentibus, et Patronis,' to parents of all sorts) to level at us both. And I believe it that William Pinchin and I should have been better friends, if I had done by my patron, as he hath done several times by his parents, cozen them, curse them, and beat them out of doors.

Sect. 14. But further touching Mr. Speke; I could never hear it reported by any one (unless by him who will swear any thing) that this gentleman was ever given to intemperate drinking, no not in his healthy and younger years: but now in his latter days, (and this was the time to which this Deposition refers, and in which I had any knowledge of him) it is well known that he was so valetudinary and crazy, that his own infirmities would have constrained him to have kept a temperate diet, although he had not been disposed to it.

Sect. 15. And then as touching the other gentleman, Mr. Long, that he should be within two years, (that is within two years of the time wherein William Pinchin thus deposed, which was April 28, 1656,) in such a place, and with such company drinking hard, will seem very strange to any one that shall peruse the Register book of the parish of Corsham, for there it appears (and so much was certified to the Commissioners, at their last sitting at Lavington, under the band of the sworn Register of Corsham,) that this Mr. Long was buried, December 9, 1651. So that if William Pinchin swore truly, it must needs follow that this Mr. Long was drinking hard at Box, more than two years after he was in his grave at Corsham. Another circumstance for Mr. Blisset.

There is in the close of this part of the Depositions, That he cannot say that ever he saw me drunk: Which clause I would have the reader to bear in his mind until the transactions of the next day.

Sect. 16. Pass we now to the last part of his Deposition which refers to the third Article of Charge exhibited against me, it is this,

That Mr. Bushnell have always baptised infants by the form of Common Prayer, till the last Sabbath day, excepting the sign of the cross.

To which for present I shall say but only this, that for any thing William Pinchin knew, it might be so, or it might be otherwise; for (excepting the Sabbath which he speaks of in his Deposition, whereon he staid for a godly

purpose no doubt) it was none of his use in those few times he came to Church to stay so long till children were baptized.

Sect. 17. The next Deposition taken, was the Deposition of Peter Webb, in these words:

That he have often seen Mr. Bushnell at Alehouses, but only about parish business. And saith further, That at Michaelmas was twelve-month he baptised this Depo-nent's child by part of the Book of Common Prayer, and that about four or five years since, he saw him playing at cards at Mr. Speke's.

This Deposition (because it hath nothing singular in it but playing at cards, which will fall under another Deposition) I shall at present pass over.

Sect. 18. Next comes Obadiah Cheltenham, and swears, That he have often seen Mr. Bushnell at Clark's Alehouse in Box, and at the George at Corsham, from five years past, till within two years, but never saw him drink to excess.

No nor so much as drink neither, for his words were, That at Corsham he did only look into the room where I was, belike he means the room where (after the sermon was ended) the Ordinary was kept. I wonder he had not charged me with frequenting Inns and Alehouses at Lavington, Caln, Marlborough, in attendance to these Commissioners: For I can assure thee, that since I came to Box, I never lodged so many nights in Inns and Alehouses, nor have spent a tenth part of money in those Inns and Alehouses, as I have patted withal in this business: And perchance somebody, who knows the pulse of the Marlborough Commissioners very well, will (when I have told him all which I intend) say, that my discharge might have been procured at a much easier rate than mine undoing.

Sect. 19. But I must tell thee, that Obadiah Cheltenham was far more fierce at Lavington than his Deposition represents him: For (beside that he there thwarted with one witness, and prompts another) he then upon oath informs the Commissioners, 'That I had used a prayer before sermon so often, that the very boys of the street could repeat it and laugh at it.' Which passage it seems, Mr. Chambers noted, for (as I have been told) he reported it in another place: Now since Obadiah Cheltenham had always free admission to them, and a gracious countenance from Mr. Chambers and Mr. Byfield, I may conjecture, that in private at least this was looked upon as matter of Charge against me.

Sect. 20. In order to my vindication in this particular, I shall offer to thy consideration these things.

1. That I conceive it not to be any crime in a minister to use a set Form of Prayer.

2. That I conceive it not any crime in a minister, to use the same set form of prayer more than once. I am not the first that saith, That the gift of Prayer doth not exclude means, and endeavours of our own; as promeditation, diligence, study, both of matter, order, words:

Nor did I ever take praying in, or by, or with the spirit, and extempore, unthought of, unpremeditated prayer, for one and the same thing. My present judgment is, that as to the public there is no such praying by the spirit as when we have seriously considered and bethought ourselves beforehand, both of what we have to pray for, and of whom we are to ask it. Nor am I singular in it if I should say, that the spirit doth then help our infirmities, when as with due affections, and requisite ardency of desire, we pray as we have premeditated, or have been taught. And if it happen, that the people are well acquainted with it, it is so much the better, the business is their own, and of such a nature as that it is a business which nearly concerns them, and as I conceive it the minister's duty to fit his public prayers so as they may be most for public use, so I conceive it fit likewise, that the congregation be well acquainted with both the matter and order of them, that both the one and the other may engage with the greater fervency, because they all know, how nearly they are concerned in it; and can all joyfully say Amen unto it. And to give thee my thoughts in this particular, I say, that as the example of those who have attempted this unpremeditated way could never encourage me to attempt the like, so neither have the arguments which they urge against this premeditated way of prayer prevailed so far with me, as to make me change my mind.

Sect. 21. But now as to mine own particular, I shall say thus much, That I have formerly made use of the same prayer in congregations far more judicious and numerous than is that of Box, yet I could never hear any thing taxed in it, as misbecoming or ridiculous; No nor at Box neither, unless it were by William Pinchin, and Obadiah Cheltenham, or such like, who may have the impudence to dislike what they have not the grace to practice. Nay, even at Box, I am confident of it, Obadiah Cheltenham may go throughout the whole parish, and be so far from finding boy, or boys that laugh at it, as that he shall not find any one that remembers so much as three lines of it: And therefore I look upon this as a double slander, against the boys and myself.

Sect. 22. It was at this time and place likewise that Obadiah Cheltenham prompted Thomas Powel another witness, to inform, That I had preached unprofitable doctrine; what it was, we shall have when we come to Tho. Powel's Depositions. And doubtless, Obadiah Cheltenham would have had the Commissioners believe, that there was nothing but good meaning in all this; that the desire of his heart, and his utmost aims were, that they might be fed with food both wholesome and convenient for them; and therefore I must be represented as an unprofitable teacher, and so to be laid aside, so to usher in an expedience to these their godly desires: But see now how the event hath bewrayed all. Mr. Stern hath fairly told me, that these men, William Pinchin, and Obadiah Cheltenham, invite him to

Box with much importunity, and many promises, even beseeching him to come and preach Christ among them, of which for a long time they said that they had a great want; and therefore (like the man of Macedonia in Paul's vision) they pray him to come unto them and help them: But (said he) all this was but for some interest of their own, their gain (belike) being their godliness; William Pinchin of late coming but seldom to church, and Obadiah Cheltenham being (as it is said) a frequenter of the meetings of the Anabaptists.

Sect. 23. Next comes Thomas Powel, and deposes, That sometimes, till within four years past, he have seen Mr. Bushnell in Raynald's and Baylie's Alehouse in Box, but knows not what drew him thither: but never saw him drink to excess. And saith, that till within three or four years past, Mr. Bushnell have baptized by the form of common prayer. And that about two years since, Mr. Bushnell preaching against malice, said, that malicious persons were the devil's nymphs, and wished them with him for their vices.

Sect. 24. To which I shall say, that if Thomas Powel had been then demanded when he had been last at Raynald's, he would have been made confess that he had not been there in six years before, and therefore possibly he could not see me there within four years. But now whereas he adds, he knew not what business drew me thither, I doubt me that he wilfully forgets himself, for he cannot but remember that the business which once drew me to Baylie's, was his own; to compose a difference then depending betwixt himself, and a neighbour whom he then maliciously and spitefully prosecuted, about which we spent the greater part of the night; and I believe that he cannot forget that the business which drew me to Baylie's at another time was to beg relief for Marlborough, where on the Lord's day we found him sitting at a table with a jug before him: when and where with some ado he bountifully advanced a great towards that charitable work; which was not so much as we received from some who lived in the church-house, and received alms of our monthly collection: Nor had our benevolence to Marlborough amounted so high as it did, unless some amongst us had been far more liberal than Thomas Powel was. Now I cannot readily remember that I ever saw Tho. Powel at Baylie's but only at those times.

Sect. 25. And since I have on this occasion mentioned Marlborough, I must tell thee, that some of that place (such whom I believe had their share in the dividend) have since made me a very sorry requital, either for my pains for them, or my charity towards them. I little thought it, when I went about from house to house throughout our whole parish and tythings, for several days together, with much importunity too, to beg for Marlborough, that Marlborough men, (within three years after, sitting in their stately houses, built at the country's and other men's charges) should be

with the first that should turn me out of doors: I hat those who (had it not been for the benevolence of the country, which was much advanced by the industry of the ministers) might have sat without doors, should with a breath leave us in as sad or a sadder condition than the fire left them. And thus much will I say more unto mine own particular, that my purse as well as my pains went very far for them, for they received more from me, and my little family, than from all those 22 whom they countenanced and encouraged to swear against me: I recorded it in our parish register book, both the sum which was collected for them, as also the names of the persons who bestowed their pains in collecting of it. Which one of the Marlborough men, (Mr Tho Bayly perusing the register book) noted, how he liked it I know not, perchance not so well. I have read of those of that disposition, that being once alott, cannot endure to be told that ever they went, or sent a begging, but when they were on their legs again, their main endeavour should be to remove or crush them who lifted them up, for fear it should be known that they had been down. Now whether I incurred the Marlborough men's displeasure in being so saucy as to commit them, some time, indigent and begging condition to posterity, (they though most willing to receive, yet as unwilling to be told of it) I will not judge. I have not now my register book at command, but for want of that let these papers remain as a record to testify to the present and future times how these Marlborough men have requited me.

SECT 20 But to return, the next thing in Tho Powel's Deposition is, that he never saw me drink to excess. Which I shall desire the reader to keep in his memory till the transactions of the next day. Next he swears, that till within this three or four years, Mr Bushnell have baptized by the form of Common Prayer. To which I shall reply only this, that as this was nothing to the Ordinance by which these Commissioners sat and acted, so it was more than Thomas Powel knew, for he was a man that seldom came to church, nor so I remember that I ever saw him stay the time during the administration of that sacrament. For present I shall desire thee to observe how Thomas Powel treats in William Pinchin's track, and swears as if he had taught him his lesson.

SECT 27 The next branch in his Deposition, is, that about two years since, Mr. Bushnell preaching against malice, said, that malicious persons were the devil's nymphs, and wished them with him for their wages.

And where lies the matter of charge here? Or to what article doth this Deposition refer? Is malice become a virtue? And if a vice, is it so rare in the land, that it is unreasonable to reprove it? And what have we next? I said that malicious persons were the devil's nymphs:

*Resum teneatis*—

Indeed I could not forbear, which doubtless

(had he seen it) would have much offended Mr. Byfield, as he was on the like occasion at another time. The clerk, as wondering at the expressions, for some time withheld his hand, belike, conceiving that Tho. Powel might mistake, but he continuing earnest, and often iterating these words, nymphs, nymphs, the clerk enters it accordingly. Doubtless, Tho. Powel conceived these to be some stabbing words, he was so zealous for them; and yet to any understanding man they will not amount to any charge, unless it be of simplicity, foolishness, or malice, in the reporter of them. For

1. Few that know me will believe it, that I should ever say so. And

2 In case I had said so, the most that I could have been charged with, had been impropriety or incongruity of speech, although we read of the devil's children often, yet of his nymphs never, until in Thomas Powel's Deposition.

Give me leave to adventure my conjecture how this might come to pass. I told thee a little before, that Tho. Powel in his Deposition did tread in William Pinchin's steps, I doubt me that he had William Pinchin for his tutor here, and that he taught him to say, that I had said that malicious persons were the Devil's *imps*, which Thomas Powel misapprehending, or remembering, might swear that I said, malicious persons were the Devil's *nymphs*. I have read of a guide, that by mistaking *Casulatum* for *Casinum* was likely to have hazarded Humble's whole army. What hazard Thomas Powel hath brought upon his soul by this, I leave it to him who will one day call vain and unadvised swearers, much more false swearers to an account.

SECT 28 And although at first I smiled at the ridiculousness of the expressions, yet afterward considering that Thomas Powel was upon his oath, and so bound by that sacred tie, wherein our great God was called in as a witness to the truth, and consequently an avenger if he spoke false, and he bound to speak the truth, the whole truth, and nothing but the truth, should then depose such words as spoken by me which never were spoken, and I believe, looked on by many even of the Commissioners themselves as even impossible to be true, I say that this did much sadden my spirit; and sorry I am that it was so much or no more looked upon by these Commissioners. But indeed, (considering what kind of testimonies they received against me, as likewise what use they made of those testimonies) I much doubt it that they made use of such testimonies against me, which they in their consciences knew to be false. And this they might do, (although without equity or conscience, yet) not without precedents, such as they are, both from the Old and New Testament; but methinks, the example and the ends of these men, are enough to frighten any others to adventure the same way. 'Hast thou walked the old way which wicked men have trodden?' Job. xxii. 13.

Sect. 29. I have often proposed it unto myself, what, and when, and where any words should be spoken by me which Thomas Powel could wrest to such a sense; at length I lighted upon this conjecture, wherein, from some words which Thomas Powel hath formerly let fall in some company, I am confirmed. Some years past (I am sure more than two twice told) I took for my text those words of our blessed Saviour, Math. xii. 32. 'But whosoever speaketh against the Holy Ghost, it shall not be forgiven him neither in this world, nor in the world to come.' Where, having told them the usual definition of this sin unto death; towards the conclusion of my discourse, by way of caveat, I advised my hearers, that as they desired not to come at it, so neither to come near it, no nor so much as toward it neither: In order whereunto, after several other caveats, I told them, that men must take heed of raising and reporting malicious slanders; such which their own consciences cannot but tell them are false, and yet some base by-respect will put them on both to report and justify them: adding further, that a man might come towards this sin against the Holy Ghost by slandering, or maliciously reporting a known falsehood of but a man: for I had told them before, that the sin against the Holy Ghost, was not so called because it was against the person of the Holy Ghost, but because it was against those graces whereof the blessed Spirit by way of appropriation is said to be the author or giver, which I clearly manifested unto them from the case in the text; for otherwise with what congruity could our blessed Saviour have now taxed them with this sin, when as their malicious slanders were against himself? It is without doubt that these Pharisees, with whom our blessed Saviour had now to do, came near it. And therefore they came near it (Peter calls it 'a resisting of the Holy Ghost,' Acts vii. 51.) because that wilfully and wickedly, against knowledge, and against conscience, they condemned his person, reproached his life, miracles, doctrine, and laboured the multitude to believe and report such things of him which they themselves must needs know were both false and slanderous: and all this for the carrying on of their hypocritical pomp, and vulgar esteem. After which I added, that such who are busy to suggest false reports of men, and are desirous to publish such things of them which they know are false, on purpose to make them odious, that they may the better compass some base end of their own, and make no conscience of what they report, but only labour that they may get credit to it, such men as these are in that way which leadeth to that sin, which is the sin which shall not be forgiven. And indeed such men do so properly perform the devil's work (for he is *the father of lies*, calumniator, a malicious slanderer) that it is the great pity or mercy of God, that they are not with him for their wages.

This was the sum of the discourse which I made upon that part: And if I shall be convinced of any thing therein as contrary to sound

doctrine or good manners, as containing any thing false or unseasonable, I shall most willingly retract it; and be beholden to the man that shall instruct me better: till then I shall remain in the same mind as formerly I was, but shall not cease to wonder at somebody, (and considering that it was the wickedness of the Pharisees which occasioned this discourse, as likewise considering the end which in likelihood hath befallen them for this wickedness) I say considering these things, I cannot but wonder at somebody, as Cicero did at Mark Anthony: 'I wonder at thee, Anthony, that thou dost not tremble at those men's ends whose actions thou dost imitate.' Tert. Phil. Temor. Antoni. &c.

Sect. 30. I must trouble thy patience a little further about this same Thomas Powel; I have already told thee what I spake, as likewise the occasion upon which I spake it; but now why should Thomas Powel take this amiss, and keep it so long in his mind, and article against me for preaching against malice? It is well known, that (if deducible by good consequence from the text) I was as plain, and as high against others as against the malicious; was malice at this time Thomas Powel's Herodias? Thus it is for a man to have a guilty conscience about him: he confesseth himself guilty of the crime by his fretting and storming at the reproof. I can clearly say, that my pulpit reproofs were far from particularising of persons, yet I shall give thee another conjecture, upon which Thomas Powel might imagine that by that discourse after an especial manner I aimed at him.

Sect. 31. About the year 1651, there happened some difference betwixt this Thomas Powel and Robert Rainalds, the clerk of the parish; the person whom I said that this Thomas Powel maliciously and spitefully prosecuted. Of him Thomas Powel complains, and before some Justices of the Peace takes his oath, or procures William Cottle to swear it, that Rainalds had sold beer on the Lord's day, as likewise by unlawful measures.

Here I shall desire thee to observe, 1. That he neglects our own neighbouring Justices, and makes his complaint before Justices of another division. 2. This oath was merely upon hearsay. 3. That the complaint is only against him that sold, no mention made of him or them that bought.

I shall have nothing to say touching the first of these but now as to the second, that this oath was only on hearsay, I am confident that Thomas Powel dares not say that he saw it, or knew of it, but only by report: and here William Pinchin and Thomas Powel concur again: William Pinchin swears touching things done at Box, when as he was then at Broughton, and William Cottle or Thomas Powel swear of selling of ale at Rainalds, when as perchance they were abroad at some other alehouse, or asleep at home. But now as to the third thing: If he knew that Robert Rainalds sold ale on the Lord's day, then must he needs know who bought it likewise, and how comes it that there



is no mention made of him or them? There is a penalty to the one as well as to the other, and I take it, the like penalty to the one as to the other. And had it been pure zeal, and zeal like Phinehas, they had been *pares in peccato*, equal in the offence, so Thomas Powel would have made them like Zimri and Cozbi *pares in pena*, equal in the punishment. Nay further, I am sure that it will be made appear, that to Thomas Powel's knowledge others have sold ale on that day, as well as Rainalds, yea and by as small measures, yea and that Thomas Powel hath been at the drinking of it, yea and hath paid part of the reckoning, and yet we have not one word from Thomas Powel of this and how comes he to be so zealous for the Lord's day, and lawful measures now? Certainly not out of any regard he had either to the one or the other, but to satisfy his own leavened spleen, in doing Rainalds a discourtesy. This same partial indirect information was among the heathen accounted most unjust and unworthy 'Quis hoc statuit, quod æquum sit in quantum, id iniquum esse in nevum.' But now amongst the people of God (if proceeding from a wrong ground in the informer, as envy, malice, or the like, or looking towards a wrong end, as benefit to himself, or revenge or mischief towards him upon whom he gives the information) it was accounted a lye, although the informer had spoken nothing but the truth. And when it shall be upon oath that a man affirms so, I doubt not but that as he who speaks so, speaks falsely, so he that swears so, swears falsely 'Omnino idem sit accedente juramento perjurum, quo l'est in nuda pollicitatione mendacium.' Dr. Sanderson, de Jur. Pret. 2, §. 6, in fine.

SECT 32. Now possibly I might thus discourse on these words, near about the time that these differences depended betwixt Thomas Powel and his neighbour, and Thomas Powel (for hypocrites are very touchy) might cut his own heart with them; his conscious breast giving him that when I reproved the fault, I meant him, and might watch for an opportunity (for hypocrites are very revengeful) to do me some displeasure. This I remember, when there was a July at Chippenhams employed to enquire touching ministers, and the value of their livings, this Thomas Powel and William Pinchin, and another miller, I think they called him Stanmore, were as I heard very busy about me, but then they had not Commissioners which were for their turns, and therefore as to my prejudice they did nothing. But since Thomas Powel makes this an article against me, that I preached against malice, and said that malicious persons were the devil's nymphs, I must needs conclude him to be guilty of the crime; I shall tell him further, that I have read of such a one, (yea and a good one too) heretofore. 'Master, thus saying, thou reproachest us also.' Luke xi. 45. where you may observe that the lawyer freely acknowledgeth himself guilty of those crimes which our blessed Saviour there reproves; and yet the impudent proudfly

counts himself slandered or reproached in that he is told of them.

SECT. 33. We have no more to say touching the Depositions which were taken at this time; but yet for a conclusion to the transactions of this day, give me leave to observe a few things unto thee.

1. That the Deposition of Mary Workman, who was examined upon all the Articles, and that Deposition carefully taken, (for said Mr. Blisset, she was a midwife, and so might know much) is wholly left out.

2. I told thee before that Obadiah Cheltenham then thwarted with a witness which was this Mary Workman, he then affirming when she had denied it, that I had within a quarter of a year, signed two children with the sign of the cross, she holding them in her arms; which he said were the children of Mr. Speke, and Mr. Snell. [Quid jurant? de veritate dicenda non modo super articulis datiss in nos omnibus quæ ad causam faciunt. Cod. lib. 4. num 9, in marg ad litteram a.] This made the poor woman amazed, considering that Obadiah Cheltenham being sworn with herself but a little before to speak the truth, the whole truth, and nothing but the truth; and she rightly conceiving that the same oath bound him still all the while he was before these Commissioners, and speaking to my business, I say it made her amazed, that he should swear that I signed two children within a quarter of a year, when as one of those children, Mr. Speke's, was baptized Octob. 28, 1653, and almost a year older than the Ordinance by which these Commissioners sat and acted. Another circumstance for Mr. Blisset.

SECT 34. Nor must it be forgotten, that at such time as William Pinchin was giving in his testimony touching my use of the form of Common Prayer, he having informed that I began with the Lord's Prayer, and afterward read some Psalms, Mr. Byfield asks him whether after the end of the Psalms, I said, Glory be to the Father, and to the Son, and to the Holy Ghost. He then asked likewise whether (after I had baptized children) I said, Forasmuch as this child is regenerate I remember not what answer William Pinchin made to one or other. But to me Mr. Byfield seems to intimate by his questions, that it should have been matter of charge against me if I had used either. I assure thee, reader, that this made me wonder: and what may there be in that Doxology that should offend Mr. Byfield? The thing itself? And is it a crime to give glory to the Blessed Trinity? Or will he be angry with us because we say as the heavenly host did, Glory to God in the highest? Were we not all baptized in the name of the Father, and of the Son, and of the Holy Ghost? Which I conceive to mean more then Beza's 'Invocate nomine Dei Patris,' &c. and to import as much as to devote ourselves unto, or to resign ourselves up to the service of the Blessed Trinity: and are we charged for this, that we now make public profession of it? Or was it disliked by him because looked upon now as altogether useless, it being common

by the Council of Nice, in confutation of the Heresy of Arius? But now what if I should prove it to be more ancient than that Council, and formerly put to another use, and that those Fathers did not so much constitute as quote it: and quote it thereby to overthrow the blasphemy of the Arian, because it was contrary to that Doxology, which was appointed in the Apostolical and Primitive times? But yet admitting that Heresy to have been the cause of it, is it therefore now a crime, such a crime as may deserve ejection, to continue it? Is our field, our church so free from those tares? Is the orthodox doctrine of the Trinity so sincerely taught and believed, and so unanimously? tell me, you reformers, have you never since you began your reformation, heard of some that have plucked off no less than two or three of the persons of the Blessed Trinity? Stripping one of his being, another of his deity? And indeed had I not found it by experience, I should not have believed it, that the use of this Doxology should be imputed to a minister as a crime, or that a man should be reputed scandalous for this, because he made public profession that he was no Arian.

Sect. 35. And as touching Mr. Byfield's next query, whether I said, Forasmuch as this child is regenerate? I answer, that I believe that Mr. Byfield had small mind to engage himself or me in any of the public schools on that question touching baptismal regeneration, possibly he might have read what Dr. Burges and Mr. Bedford have said upon the same argument: yea even Mr. Baxter himself doubts not but that baptism is an instrument of relative regeneration and sanctification. But to put this matter (as to Mr. Byfield) out of doubt. In that confession of faith set out by the Assembly (whereunto there was no doubt Mr. Byfield's consent and approbation as well as his hand) we have these words:

"Baptism is a Sacrament of the New Testament, ordained by Jesus Christ, not only for the solemn admission of the party baptized into the Visible Church, but also to be unto him a sign and seal of the covenant of grace, of his ingrafting into Christ, of regeneration."

Doth Mr. Byfield under his hand acknowledge it to be a sign, and seal of regeneration, and yet is it in his judgment a crime in me to say so? If it be among men, when once a man hath put to his sign and seal, the person so engaging, as to all purposes and covenants expressed in that instrument, stands obliged to make them good: and the person to whom the grant is made, will from that day rest himself assured of his bargain, because he hath it under hand and seal. And dares any say that the covenant of God is not authentic, when as he hath put his sign and seal to it? And if it be authentic, can it be a fault in a minister to publish so much? I shall sum up all into an argument thus:

Baptism is a sign and seal of regeneration to infants, of believing parents: but the child or children by me baptised were such: Therefore it is a sign, and seal of regeneration to them.

Mr. Byfield hath under his hand acknowledged the major proposition, and the minor he dares not deny; and yet he was angry with me for inferring and pronouncing the conclusion.

Certainly his spleen conceived against the Liturgy, had now so far prevailed upon him that in his passion he forgets what he had formerly written and published for orthodox. So that methinks Mr. Byfield might have then done as did one of whom I have heard heretofore, who stiffly denying a thing wherewith he was charged, and after being convicted of the truth of that charge by a writing under his own hand, fell to smite and complain of his head in some such upbraiding words as these, 'Why head, head, head, hast thou forgotten what thy hands have wrote?'

Sect. 36. But I shall put an end to the transactions of this day, desiring the reader to observe only this, that as we were leaving the room about eleven or twelve of the clock at night, William Pinchin and Obadiah Cheltenham delivered in a Paper to one of the Commissioners, which (as we guessed by the sequel) contained either that they had other matter of charge, or else some other witnesses which they desired might be heard against me.

The Transactions at my Third Time of Appearing before them at the White Hart in Marlborough, May 8, and 9, 1656.

Sect. 1. Shortly after my being at Lavington, there came a piece of paper unto me in these words:

Mr. Bushnell; You are hereby required to take notice, that the Commissioners for ejecting Scandalous Ministers, have appointed their next meeting at the sign of the White Hart in Marlborough, to be holden on Thursday the 8th of May next, by nine of the clock in the forenoon; when and where they expect and require your appearance before them, with your witnesses for your Defence, to receive their judgment according to the demerit of your causes. April 29, 1656. Signed in the Name and by the Order of the Commissioners, by me For Mr. Walter Bushnell W. BLISSETT. Minister of Box, these.

Sect. 2. In order whereunto I repair unto Marlborough, where I find at the White Hart a very great appearance. For the Commonwealth, summoned in by the procurement of William Pinchin, there appeared (besides William Pinchin) Thomas Powel, William Clement, Nicholas Spencer, John Cottle, William Rawlins, Thomas Stevens, Anthony Balden, William Cottle of Rudloe, Henry Harris, John Harding, (Obadiah Cheltenham being gone thence for London that morning) these being all sworn, were required to speak to the Articles. But before any Deposition was taken, Mr. Byfield made a motion that all my witnesses (for I had many at that time there) might be withdrawn or turned out, while the witnesses for the Commonwealth were in examination; giving this reason, That it was not meet that they

should hear what the other witnesses testified. Not meet indeed, for they would have noted and remembered many of their contradictions and perjuries, which Mr. Byfield would not that they should be public. This man in his proceedings desiring to be as close and as just as the Inquisition. This motion of his was soon condescended unto, and accordingly put in practice: he had before taken order that I should have no copy of their Depositions, from the clerk; which order was so strictly observed, that (which was strange) even money would not procure it; and here he takes a course that we shall not hear them from their mouths. But now when my witnesses came to be examined, the others were permitted to stay still, yea and encouraged to contradict, control, except against, and turn back whom they pleased; of which the reader shall have more hereafter.

Sect. 3. The leading men at this time were William Pinchin and Tho. Powel, who (for in the clerk's copy they are both yoked together) depose thus, that about seven years since Mr. Bushnell drank so hard upon the Lord's day (as they then conceived) that when he was at church he could scarcely read plain and distinctly, and John Jones and Lawrence Pinchin came from his house with him.

Sect. 4. Where I shall offer to thy consideration:

1. That whereas Thomas Powel swore formerly in William Pinchin's track, here they swear in a breast together.

2. That they had both sworn before that they never saw me drunk, or drinking to excess, and yet now upon the matter, and by consequence they depose it.

3. That this their deposition is grounded merely upon conjecture, neither of them seeing me drink a drop. Let us next see the reasons or grounds which moved them thus to conceit.

1. When I was at church I could scarcely read plain.

2. That John Jones, and Lawrence Pinchin came from my house with me.

Sect. 2. As to the first [‘When I was at church I could scarce read plain’]; and could no body observe this but Thomas Powel and William Pinchin? by what I have charged them with, and proved upon them in the Transactions of the former day, these two must needs appear, (to such as are of honesty or discretion) to be very unfit men and incompetent witnesses against me, much less to be ringleaders to the rest. I am confident that there were more at church at that time as well as they, and such as were as attentive and sate as near as they; and how comes it about that William Pinchin could find no swearing mate but Tho. Powel? This may be the reason of it, Thomas Powel had the last day approved himself to be a very hopeful scholar, and having then deposed, that about two years since, I said, that malicious persons were the devil's numps; he might well depose now that about seven years since I could scarcely read plain; and yet, should I ask them, what

chapter or psalm it was, or in what words I faulted, I believe (for all their good memories) they would say that they could not remember it: if the faulting had been often, the congregation must needs have noted it; and if but once, how come they to forget what it was? And in such cases I conceive it necessary that depositions and examinations should descend to particulars, and as they had charged me with indistinct reading, so ought they to have given instance wherein I failed. If they had charged me with treasonable words, or lascivious debauched speeches, it would have been demanded, but what were those words? what were those speeches? I told thee not long since what an excellent faculty Thomas Powel had to remember, when he came to particulars; and I believe that at this time (had they been urged to it) we should have had some such wise answer now as we had then; It was at this time that William Pinchin informs upon oath that I had used some of the Common-Prayer at the thanksgiving for his wife; and being asked what I said, he answered, That I prayed that the Moon should not burn her by day, nor the Sun by night; doubtless this man remembers himself accordingly as he teacheth Thomas Powel.

Sect. 6. But farther, in case I read not plain, the cause might not be in me, but in the book, wherein there are many typographical errors, some of which I might unexpectedly light on. It might proceed likewise from dimness of sight, darkness of the afternoon, or from many causes beside. But if they will needs have it that he who reads indistinctly must undoubtedly have drank hard before, I shall from their antecedent infer this conclusion, that their man since at Box never came to church sober, for I have heard from some of the place that he hath not read a chapter plain and distinctly since he came among them.

Sect. 7. And to what end is this added that John Jones, and Lawrence Pinchin came from my house with me? The one is my uncle, the other my brother in law; living both in Corsham parish, a parish next adjoining. Touching whose behaviour if you enquire of their neighbours, I believe you shall be answered, that it is sober and civil; unless William Pinchin or some such like seduce them into their company. And as touching the occasion which drew them thither, I am confident that it was far more warrantable than what hath drawn William Pinchin on the Lord's days to Broughton, or Thomas Powel (on the same day too) to an alehouse at Corsham. I am apt to think that a main reason (besides his malice) which moved William Pinchin to swear that there was hard drinking at my house, was this, because it is his usual custom to do so at his own; for I can make it appear unto thee, that this William Pinchin together with no less than four of those who have appeared against me, have at his house from Saturday night till Sunday morning, set up drinking and singing, dancing and quarreling, inasmuch that William Pinchin conducted his neighbour Chas-

tenham on his way homeward, belike for fear he should be assaulted.

Sect. 8. There was at this time another clause in their joint Deposition, as rational as the former, and it was this : that when John Jones and Lawrence Pinchin came to church they had high colours. Whether this clause were ever taken, or whether Index Expurgatorius hath dashed it out, I cannot say. But of this I am sure that some discourse there was about it in my hearing, while the Depositions were in taking : and as I have heard among the Commissioners after they had dined, when and where it was observed that some of them (having feasted themselves belike at the cost of Incident Charges) had very high colours : and this might be the cause why this branch should be cut off, because that from this dangerous topic, the same conclusion might be drawn against some of themselves. But now as touching John Jones and Lawrence Pinchin (admitting it were as they swore yet) their colours could be no argument of their hard drinking, for they that know them, seldom see them otherwise, but all times and seasons, high coloured and ruddy. If arguments may be deduced from complexions, I should then have argued with Mr. Byfield, that if ruddy complexions be a competent medium to prove excessive drinking, in them that look so ; then, that pale, wan, livery countenances were a competent medium to prove an excess of envy or malice in them that look so.

Sect. 9. Next comes William Pinchin alone in these words : And this deponent Pinchin saith farther, that about five or six years since, Mr. Bushnell was at a stabbal match with Mr. Edward Long and others, when they came to Rainald's alehouse aforesaid (this deponent being one of the company) and there they drank very hard, and healths were put round, and Mr. Bushnell drank them with his hat off, and did then drink excessively as this deponent conceives.

Sect. 10. Where first I shall desire thee to observe that William Pinchin in this deposition seems to contradict what he had sworn before. There he swears that he cannot say, that he ever saw me drunk ; and yet now that about five or six years ago, in his company I drank excessively, which is as much as if he had sworn I was drunk. It is like enough he may say (it is usual for him so to do) that at that time he did not mind it ; but since searching and bestirring of his memory, he hath by recollecting of himself recovered it, and can depose accordingly ; and now give me leave to tell thee (for this was not the first time that he made use of it) of the strange faculty of this man ; to see what gradations and pauses, he makes in his Depositions, how he remembers best at a distance ; how he mends himself in his recollection, and can swear more punctually of a thing done many years ago, than he could when it was but newly acted, and this is remarkable, that his second thoughts, his rounded oaths, are most precious ; he never swearing so desperately

as when he hath most bethought himself, which will give any intelligent man cause to think, that what he deposeth in the second or third place, he doth not remember, but invent.

Sect. 11. I shall instance touching this man, in a particular besides my own, in the year 1646, he swore before the Committee of Wilts, sitting then at Marlborough, that he had heard that Mr. Speke rode in arms in the king's quarters ; but in the year 1656, he swears before some Commissioners sitting at the Devises, that he had seen Mr. Speke ride armed in a troop of the king's part, along by his father's house ; which clause of the Deposition riding armed in the troop must needs refer to some time before the year 1646. Then he could depose only that he heard of such a thing ; but ten years after he can depose that he saw it, which he swears accordingly. Touching which Deposition, although the gentleman suffered some prejudice in his estate ; but more in his thoughts, yet he seemed to be of the same mind, as an eminent knight once was, who being falsely accused upon oath, replies, That he was more sorry for the witness's perjury, than he was for his own danger. This gentleman Mr. George Speke, (although he freely forgave him, and prayed that God would forgive him likewise, yet) even to his dying day often protested, that by such strong assertions, wherein he called God to witness, (which amounts to a voluntary oath) that Wm. Pinchin had sworn falsely against him.

Sect. 12. This and some such like passages gave a country farmer (as I have heard) occasion to say, that William Pinchin in his Depositions did usually ' fetch trip ' ; it is like that his allusion might be to running leapers ; with whom it is not usual to do their best at first, but they assay again and again, and in their latter ever striving to out-do the former, in order whereunto, they fetch the larger or swifter trip. Now observe how William Pinchin observes this method in his swearing :

1. Against Mr. Speke, against whom he swears, first, That he had heard that he rode in arms ; but now this would not carry it, nor reach the mark at which he aimed, and therefore the next time he fetcheth a swifter trip, and swears that he saw it.

The like against me at Lavington, he swears, that although he hath seen me drinking yet he could not say that ever he saw me drunk, but now this oath was not mortal, nor did it cleave the hair ; and therefore he fetcheth a swifter trip at Marlborough, and swears that he conceives that I drank to excess in his company. He would have made the Commissioners believe at their last sitting at Lavington, that he had sworn further yet, and that the clerk had not taken it ; but the clerk offering to depose that after he had in private a perusal of the Depositions, with a power to add, alter, or amend what he pleased (for this was a favour which was shewn them) and that William Pinchin had left it, as the clerk had entered it, there was an end put to his leaping or fetching trip any more.

Sect. 13. And now methinks William Pinchin shews himself like such a witness which the chief priests and elders sought for heretofore, and could not find; for after their utmost search it is said of theirs, that neither so did their witness agree together; which disagreement, or inequality, or imparity of their testimony, I conceive lay not so much or only in this that they thwarted one with another: (For St. Mark reports both the witnesses as testifying the same thing) as it lay in this that take it at most, and stretch it out to the utmost, yet that it did not reach unto, but fell short of the thing which the chief priests and elders aimed at, and that was to put our blessed Saviour to death; for these righteous men knew that all which hitherto been testified would not before Pilate amount to so much as to make him worthy of death, and therefore it is said, that neither so was their witness *in equalis, par, or conveniens*: not equal, or alike, or agreeing, because it was not answerable to the desires and designs of the chief priests and elders. But notwithstanding they had testified beside, against, beyond the truth, yet they still came short of the suborner's malice. Now in such a case William Pinchin would have fetched trip; and if he had fallen short at one time, his memory should have served him, and he would have reached it at the next. So that his former oaths did upon the matter make him find his legs, or give him aim how to cleave the pin, having been wide, short, or over shot before. And here let me observe this unto thee, touching such who swear out of malice, and such who swear for a reward. They both agree in this, that neither the one nor the other regards the truth; but the malicious swears any thing that will do a mischief; the hireling any thing that he is taught: the first looks upon the penalty of the law, and swears not the truth, but whatsoever shall render a man obnoxious; the other looks upon the reward, and swears (not the truth neither, but) any thing which may procure his wages; nor is it unusual but that he who hath so much malice as to swear falsely himself, will find so much money or somewhat equivalent, which shall prevail with some other so far as to swear, as he would have him. It being commonly seen that the malicious murderous spirits bait the hook, for the greedy and hungry to bite at and swallow. Of this the reader shall have examples in this William Pinchin and others hereafter, as they fall in their proper place.

Sect. 14. But let us descend to particulars, and take William Pinchin's Deposition apart. 1. He deposeth that I was at a stabball match with Mr. Long, and others. 2. That afterwards we came to Rainald's alehouse. 3. That he was one of the company. 4. That there they drank very hard. 5. That healths were put round, and that I drank them with my hat off, &c.

As touching the first of these, if by being at a stabball match, his meaning be, that I was a spectator there, then it might be true; if his

meaning be, that I was there as a gamester, then it was false. And what a crime it is to be there as a looker on, (or indeed as making one in the recreation) I am yet to learn. Those that there played were gentlemen of as good rank and repute, as were most in those neighbouring parts; and there they sometimes met to recreate themselves at that exercise, it being an usual game in that place; and it is like enough that it might be their pleasure to send to me, being of their ancient acquaintance, as having been born and bred amongst them; brought up at the same time, at the same school with them; and afterwards at the same time with some of them at the same university; upon which accounts thither I might come, and be then and there a looker on. And yet all this, (by their leave) with far less just cause of scandal or disrepute to my profession, than to be at markets or fairs, buying and selling, chapping and changing, matching and measuring colts and horses amongst jockeys and horse coursers.

Sect. 15. I add, 2. That Mr. Edward Long might be then and there in the company, and others likewise, but now how comes it about that some of those others are not expressed in particular as well as Mr. Long? I must tell the reader, that *index expurgatorius* hath been here again, for upon my cross examination I desired that William Pinchin might be required to instance in some particulars, in some other persons beside, which were there with Mr. Long, myself, and &c. as conceiving it to be somewhat ridiculous that it should be informed, that Mr. Long should play at stabball with &c. or that &c. should come to Rainald's, and drink healths with hats off; all know *actus esse suppositorum*, that it is the person that acts, and not the species, or the *individuum vagum*. To which William Pinchin answers, that besides Mr. Long, myself, and &c. there were Mr. Duckett, and my brother.\* This I desired might be taken and entered accordingly, and Mr. Chambers (being then near to the clerk) told me that it was so entered, and yet we see not one word of it in the Depositions which we were to plead unto: And it is like enough that this was the reason why it was dashed out, Mr. Duckett and my brother were both living, and shortly afterwards before these Commissioners ready to vindicate both themselves and me, and therefore it was requisite that they should be left out; but now Mr. Long being dead, and &c. nobody, might be kept in as most competent pot companions with me, for Mr. Long being not to be recalled, and &c. no where to be found, could not with any possibility be called upon, to speak any thing either for themselves or me. And here let me observe this unto thee, that as companions in my intemperance they either quote such who are dead, and cannot speak, or if living, then are they such which they are resolved not to hear. I could willingly add something touching that gentleman Mr. Long, this is the second time that (in this business) his name hath been in question to his disrepute long after he was dead; but they have not yet

done him all the wrong that they intend, and therefore I shall suspend what I have to say of him, till we hear of him again.

Sect. 16. And as to the next thing, To Rainald's we might come. That was the house where these gentlemen usually dined, and it is not impossible but that this deponent might be in the company. But now I shall add, as with reference to myself, that that clause of "his being in the company," renders the following passages, "that I drank hard, that healths were put round, that I drank with my hat off, and then drank to excess," even impossible to be true. I remember that that ingenious knight sir Tho. More, observes it in Richard the Third, That ambition and malice had so far transported him, that in the contrivance of his designs, and the laying of his scene, he very far overshot himself in point of common discretion, and rational polity; for, saith he, Richard pretending his body to be wasted with sorcery and witchcraft, he charges his brother's wife, the queen, as a sorceress, and Shore's wife as a witch of her council, for working this mischief towards him: Whereas, says that observative knight, besides that the queen was too wise to go about any such folly, yet if she would, of all others she would not have made Shore's wife of her council, whom of all women she most hated. Proportionably say I, if I had been at any time intemperately given, or so illly disposed as to drink too much, yet certainly this could never be where William Pinchin was; I should not in any wise have made him my companion; for since I had any right understanding of his conditions, and that was in the year 1645, as I shall thee more anon, I discovered a mass of such ingredients in him, which were enough to denominate a man base and unworthy; and these further confirmed to me, by continued and frequent, barbarous and base pranks and practices, which had that influence upon me, that from that time, as much as I could, I shunned his company, much more his familiarity or intimacy, finding in him too much of what might be detested or feared; but nothing of that which might be desired or loved. And doth he now quote himself, together with Mr. Edward Long and &c. to be both a witness and companion of my intemperance? I have a confidence that those who well know both William Pinchin, and myself, will conclude, that there was no such thing, because William Pinchin says that he was then in the company.

Sect. 17. And observe next, whether he doth not swear like a jolly fellow indeed, as if his hand were in, That there they drank very hard, &c. this deponent being one of the company. From whence it must needs follow, That he himself likewise was one who drank very hard, that drank healths with his hat off, and that drank to excess, and yet such is his malicious impudence, that he chargeth me of those crimes whereof he acknowledgeth himself to have been guilty of at the same time; which is much worse than those worst of men, the hypocritical pharisees and scribes (the Godly

of those times Mr. Chambers) for these, although justly convicted, and thoroughly ashamed and silenced, yet that we read of, were neither guilty of, nor ever confess the crime whereof they accused the woman. I have read the fable, I have read the moral of it too: but here we have an example of an envious man, who sticks not to pull out one of his own eyes, so that his neighbour might lose both his; in case that had been true which he informed (which was most false) yet in him it had been most false and base, because envy and malice put him upon it. But now what name is bad enough for it, if envy and malice did not only put him upon it to report, but to invent it likewise? I have read and heard of those who have employed themselves, or been employed by others, as spies, or decoys to insinuate themselves into men's affections: to mix with them in desperate designs, to like, to applaud and be with the foremost of the company, and all this, that they might afterward betray and accuse them. But this (however practised, however countenanced) employment always looked upon as unworthy a Christian, yet or of a man, although the end pretended be safety or security, or such which have the face of good, and what such may expect, the Apostle tells us. But now of a man that should belie himself to mischief his neighbour, and swear falsely against himself, that there might be the more poison and venom in his accusation, of such a one I have not read beside William Pinchin. The man that cometh nearest to him (as I remember) is that Amalekite. In this there lies a difference:

1. That this Amalekite only speaks falsely of himself, but William Pinchin swears falsely.

2. This Amalekite belies himself out of some hopes of reward which he expected; but William Pinchin swears falsely against himself that he may do some greater mischief towards me. There is a passage in that story which the Commissioners might have then made very good use of. David there takes him at his word, and according proceeds against him in these words, Thy blood be upon thy head, for thy mouth hath testified against thee, and accordingly punisheth him as a murderer. So might the Commissioners (for some of them were Justices of Peace) have said to William Pinchin, Thy mouth hath testified against thyself; thy punishment be therefore on thine head, and accordingly punished him as a drunkard. If William Pinchin's oath were true, then his fact was punishable; if false, then is perjury.

Sect. 18. But I shall not at present trouble the reader any longer with William Pinchin; the next that presents himself is *Nicholas Spencer*. And he being sworn, saith,

That he hath been oft with Mr. Bushnel at alehouses in parish business, and not at other times, nor did he ever see him drink excessively. But saith, that there they met by accident, and then discoursed of parish business.

Prythee reader, give me thy thoughts, Where lies the matter of charge in this Deposition?

He says we have there met by accident, I presume he means at Runnalds; it is very likely as just occasions (Robert Runnalds being clerk of the parish) might draw me thither, as were those that drew him.

Next comes *William Clement*, and he deposeseth

That in the time of the wars he found Mr Bushnell at Runnalds's alehouse. When Runnalds told him that the king had lost a garrison to the Parliament, at which Mr Bushnell struck his breast, and said he was sorry for it.

Although I see no matter of charge against me in this Deposition, unless it were scandalous to be loyal, yet let me add something touching the person who thus deposed, and with what affections he did it. I shall therefore here give thee to know, that this William Clement is father-in-law to William Pinchin, and that William Pinchin hath had a great hand over him, and hath frightened him to do that which I believe hath troubled William Clement more than the taking of any oath what soever, of which thou shalt have more hereafter. For the present I shall only acquaint thee with what affections William Clement appeared against me, and afterwards I shall leave it to thee to judge whether he had not some malicious and spiteful intentions which set him on work. Some time after this William Clement meets with one Thomas Morley, of Swinwick near Bath, whom (contrary to his former use) he beseeches very low, calling him cousin, proffering him the best, that he was glad to see him, that he had been oftentimes coming to his house, (or to some such purpose, but in the close, he falls to the business, which was, That the ministry of Box was not right, that they were resolved to out him, that in especial witness which they laid against him was one Sanders who had done Thomas Morley some wrong [that is, had broken open and robbed his house] but in regard that this Sanders was so material a witness for their purpose his request to him was, That Thomas Morley would not at that time appear against him, because that might very much impair the credit of that witness whose testimony was so useful. All that I shall now say touching this William Clement is only this, that he who laboured to stop another man's mouth, from speaking a truth which might have been to my behoof, may rationally be conceived to open his own mouth to report a falsehood which might be to my prejudice.

Sect 20 The transactions of this day do now draw towards an end, for although there be seven witnesses yet behind, viz. Anthony Balden, John Harding, John Cottle, William Rawlings, Thomas Stevens, Henry Harris, and William Cottle of Rudloe for his mother, yet these being sworn and examined upon the several Articles, had not one word to say to either, which made one of the Commissioners in a kind of wonder to ask, Wherefore so many were summoned to appear having nothing to say? I cannot but tell thee, that one of the witnesses whom I named but now, conceived that

at that time we should have had an end of it, in regard that all that said any thing which signified any matter of charge against me were William Pinchin and Thomas Powel, and in regard again, that it was so manifest that what they spake, they spake out of malice; which (said he) the Commissioners having more understanding than we, must needs perceive; and so they did some of them, and one of them, a minister too, (to the Doctor's credit be it spoken) reported it elsewhere. And yet, which is strange in this man, although he discovered their leaven, and so must know them to act from base principles, and with reference to a base end, yet he always vouchsafed to these men whom he knew thus to act, his favourable countenance and forthgrance. I know that the comparison would be odious, and therefore I will make none, only let me observe thus much unto Dr Chambers, That Pilate sought to discharge the person accused before him, because he perceived that they delivered him out of envy, and it is commendable in him; but now here we have one acknowledging that the prosecution of these witnesses proceeded from malice, and yet he backs and encourages the very worst of them to go on.

Sect 21 It was at this time that I desired the Commissioners might have been informed upon oath, what a manner of man William Pinchin had formerly been towards grandfather in law, and grandmother, father and mother, father-in-law, and mother-in-law, uncle and aunt, brother and sister, and how barbarously he had used me, and what further mischief he had threatened against me, for no other cause than that I was a magistrate, but only for entertaining, lodging, relieving, cloathing, furnishing with money his father, mother and brother, when he had beaten them out of doors, for I had a confidence that there were then amongst the Commissioners some gentlemen of discretion, and conscience, who (having a right understanding of his qualities and conditions, and being informed how he had been several times complained of, and convicted before several Justices of the Peace, of such horrid and barbarous crimes, as have scarcely been acted since Canaan, and the father of Canaan, and Absalom lived upon the earth, (all which I could then, and at this present can easily prove) would never have taken him for a credible witness, or have countenanced him as an informer, or solicitor, no nor so much as looked on him, unless it had been in detestation. But now none more forward to withstand and oppose this than Dr Chambers, who knew much of it to be true, but was not willing it is like, that it should come to the knowledge of these gentlemen, for fear that he should thereby have lost so precious a witness, or perhaps for fear that he should have heard something which would have nearly reflected on himself. This Doctor then acknowledging that there had been some small differences between them, praying that no more words might be made of it, together with an intimation that all differences were now com-

posed, or to some such purpose: In order whereunto William Pinchin produces a large paper which he had then in readiness, written by himself, containing a large story of his own making, acknowledging that there had been some small differences among them; that he had 500*l.* with his wife; and that all was now composed and well, or to that purpose. This paper (being solemnly delivered in) was deliberately read by Mr. Blisset: That Mr. Blisset which would not then allow of cozening, and cursing, and parricide, to be sufficient exceptions against him or any man in point of testimony. These it is like he looked on as circumstances; and to tell thee my mind, when I had observed the manner of their proceedings, I could not but think of those elders and nobles that condemned Naboth; who (notwithstanding that they knew the witnesses which appeared against him to be sons of Belial, notwithstanding they knew them to be false witnesses of their own making, yet) passed sentence according to that false evidence which they themselves had put into the witnesses' mouths. But to return to the paper, of all other passages I cannot forget this that he says, That now all differences were composed; belike he means betwixt his father and himself. And such another certificate might Cain have framed and delivered in, and have said, that all was now sweetly composed, and there were now no differences remaining betwixt him and his brother, for that he himself had murdered him some certain years before. That good old man William Pinchin's father was dead near three years before this time: and although I cannot but believe that God gathered him to his grave in peace: (so knowing what I know) I cannot think otherwise but that this son of his hastened his fall; and so although the father were thereby the sooner with God, yet we may well think that the son is the farther from him by it: it being usual for wicked children, brothers, and other wicked men, to hasten God's servants to him by those ways and means and means by which they ruin themselves. And although our laws repute none parricides but such who lay violent hands on their parents, and by some blows and wounds give them some visible cause of death: yet I'doubt not, but that divine justice will look upon many for parricides whom our laws do not reach; nor see I any cause to doubt of it, but that he who with frights, with threats, with curses, with blows, with gripes in the throat, with drawing knives, with continual horrid and barbarous vexations, shall even break his father's heart, (and so much William Pinchin the elder hath said that his son would do by him) is as guilty of his blood as if he had taken a knife and stabbed him. And I could advise Mr. Chambers to admonish William Pinchin that he would sadly consider of it in this his day: and I am confident of it, that they had done better service both to the church of God and to the Commonwealth, if (instead of encouraging him to swear falsely and maliciously himself, and instructing others to do

the like) they had spent some pains with him to have made him know, that the voice of a father's blood is far more clamorous than the voice of a brother's.

Sect. 22. And it is more than Dr. Chambers knows, whether there have been any such love and unity amongst those who are there yet behind, as was then suggested and pretended to be. If he knows not of it already, I can tell him that since the time that I was thrust from Box, there have been notable clashing of doors, gnashing of teeth, sweet words passing from the son to the mother, and great thwarting and crossing betwixt them in their business, it being William Pinchin's custom to do by his mother as he did by me. To do himself some mischief, that he may do his mother a greater, pleasing himself in frightening away work and custom from their mill, as I have heard; belike thinking himself well satisfied with little or nothing, because his mother doth thereby lose her half. The Doctor, if he ask the neighbourhood, or the servants, or the children, may be told that there is little there that savours of a cordial union, or of a blessed reformation. Possibly it may not be so public now as it hath been formerly: but in case she be forced out of her house, she dares not say that she was kicked or beaten; and in case she comes to any of her neighbours, she must complain softly, and in a chamber, and buy her relief, or else want it. The recompence which she hath made me, being a fair warning for any one to receive, relieve, or else to pity her. Nay more, Mr. Stern hath told me since I came to town, that her son hath used a means to force her not only out of her house, but out of the county likewise.

Sect. 23. At the same time it was that William Pinchin produced another paper (I think he received from Thomas Powel) as the complaint of an honest man (I think he added Godly too) being at that time in the county of Somerset. The writing was but short, and the complaint as I remember;

That he had lived so long under my ministry, and was not profited; or to that purpose.

Which paper upon my request they shew unto me, upon the view whereof I find it to be the hand of William Sergeant, a man indeed living in Somerset, but in a parish adjoining to Box, a considerable part of his estate lying in that parish: about the tythes whereof (for he refuseth payment) he hath been questioned and cast by both parson and vicar, and so far proceeded against, that he lay in gaol upon the same score even to his dying day. This man William Sergeant, by report, hath gone through all opinions, and at that time was, and I think still continued as vehement a Quaker, as any whatsoever. Upon the redelivery of the paper, I told them I had much to shew from the same man, and written by the same hand. Now by this the Commissioners might have guessed what sort of men appeared against me, in that they laboured to strengthen themselves by such who are profest enemies



to the profession and calling of ministers. Nor was this the first time that they received papers against me written by this William Sergeant. He it was that wrote the Articles against me, which were exhibited by John Travers, his brother in law. But since he was in person before the commissioners at my next time of my appearing; I shall trouble thee no more about him now, nor with any thing else touching the transactions of this day.

From Marlborough after an expensive reckoning we are discharged: and notwithstanding the warrant by which I appeared, expressed that I should then receive Judgment according to the demerit of my cause; yet as to sentence there was nothing then done; belike the testimonies came not up as yet to the expectations of these commissioners, or to Mr. Byfield's and Dr. Chambers desires, or else William Pinchin might give them in another paper, and that he had other witnesses yet behind, that could swear farther and testify more; but for that time discharged I was until another summons.

The Transactions at my fourth time of appearing before them, June 4, and 5, at the George in Caln.

Sept. 1. Being as I told thee thus discharged from Marlborough, May 9, within some short time after I received a piece of paper from John Travers in these words:

Mr. Rushnell; Your appearance is expected before our Commissioners at their next meeting at the George in Caln, Wednesday the 4th of June, with your witnesses, for your further defence; if you intend any more.

May 14, 1656. WILLIAM BLISSET, Clerk.

Sept. 2. Whither we repair accordingly, and there we find for the Commonwealth William Pinchin, Jone Pinchin his mother, Elizabeth Pinchin his wife, Peter Web, John Gibbons, Nicholas Spencer, Thomas Hayward, Ann the wife of William Rawlins, William Cottle, and Henry Parsons of Box, John Gibbons of Corsham, John Travers of Slaughtensford, William Sergeant of Bathford, William Sanders of Chippenham, Obadiah Cheltenham, Richard Cottle, and Lawrence Cottle of Ditcheridge, who being all sworn were required to speak to the Articles, accordingly as they were proposed unto them.

Sept. 3. But before I descend to any particulars, I shall recommend to thy observation some few things. As,

1. That William Pinchin at this time leaves off to be a witness, and now takes upon him and acts the part of a solicitor or informer, for (as I can prove) he instructed and catechised some of the witnesses before, and so far prevailed with them, that they were contented to swear not what they had informed him of, but accordingly as he had written; and afterward he marshals his witnesses into a form, and accordingly as he looked upon his paper they were called upon, and examined upon

those Articles to which he referred them. Obadiah Cheltenham being his assistant in the business; for notwithstanding it was much which they then said and did, yet we have not one word as from them in the Depositions which were taken that day.

2. I have told thee the last day, how no less than seven of William Pinchin's witnesses wholly disappointed him, and that two more said something to no purpose; so that he had none to stand by him then but his honest neighbour Tho. Powel. But now you may guess, having such hints and encouragements from his Commissioners and Doctors, he hath by this time fitted himself with men proper for their purposes and his own; for he hath now procured men of all sorts, and from several quarters, not only parishes but counties likewise; nor is it any wonder that some of them, considering their own quality, the encouragements from those Commissioners, and the virtues of their tutor William Pinchin, should fetch trip, and swear to the purpose. That he, (that is William Pinchin) suborned some to swear, and tampered with others, was, or would have been proved to the Commissioners faces: and this might be the cause why Will. Pinchin would not swear himself, because he had an assurance that he had now a sort of approved lads who would swear as he would have them; so that whatsoever is afterwards deposed you may look upon as William Pinchin's, having got this advantage by it, that whereas he swears formerly by himself, which could be looked upon only as a single testimony: now he swears by many proxies, which may be looked upon as several testimonies: when as in truth it is all Pinchin still, although conveyed by other pipes and feathers.

Sept. 4. Nor must it be forgotten that Mr. Byfield, as soon as he had taken his pipe of tobacco, coming from a window where formerly he was, made a proposal 'that all persons whatsoever there present should withdraw.' It is thought that he had some farther proposal to make, which was conceived to be touching some gentlemen then in the room, whose presence he did not, as it was thought, so well like of; but soon after we were all called in again, and all admitted excepting my witnesses; but Mr. Byfield would not by any means admit that they should be in the hearing.

Sept. 5. Something I must tell thee likewise, touching William Sergeant, whom I have lately mentioned. John Gibbons of Corsham, and he, were both at Caln before the Commissioners; but both soon thrust out of door because they would not take their oaths, and keep off their hats. Now I have heard that all which William Sergeant had then to say was against the calling; and that his coming thither was to have spoken to Mr. Chambers, or Mr. Byfield, against whom I am confident they had far greater exceptions than against me. And that this was William Sergeant's business at Caln appears by this; for it was he who after he was turned out of doors at Caln made that great

stir beneath in the Court: it was he that then scattered the printed papers, one whereof was brought up into the Commissioners-chamber and delivered to them by Mr. Crump, who was much troubled at it, and put into a great sweat thereby. And now, is it not strange that the Commissions should receive Articles and Papers against me, from such hands? Nay, is it not more strange that they should retain, and file up his papers, and yet reject his person? that his papers should be carefully kept, and looked on as godly, and yet that the author should be turned out of door as a Quaker? I wonder not so much at William Pinchin that he should produce such men (for you shall see in the following discourse that he hath prepared and produced much worse) as at those Ministers who ever countenanced the person of the one, and made use of the papers of the other. It was an handsome argument which a woman used to the duke of Clarence, thereby to withdraw him from the earl of Warwick with whom he sided, to his own brother king Ed. 4, against whom he took part. 'That the especial aim of that part wherein Clarence was at present engaged, was utterly to extinguish and ruin the house of York, whereof Clarence was an eminent person.' And I say that the consideration of the designs of such sort of men, might have told the Commissioners, the Ministers at least, that as to this particular their case was as mine; and that had they opportunity to their will, they would do as much by them as they have done by me.

Sect. 6. But to come to the Depositions; the first in order as they lie in the copy received from their clerk, was the Deposition of John Travers; who saith,

That about four (1) years since he having by (2) order taken up some Malignant's horses at Box, (3) several addresses were made to him by Mr. Bushnell, (4) major Hunt; and (5) others who came altogether from Mr. Bushnell's house, having there drank very hard, being high in beer, as this deponent conceived.

Sect. 7. Touching which Deposition I shall observe to thee:

1. That the time when as John Travers came to Box, was in August, 1648, which is much more than four years before June, 1656. Another circumstance for Mr. Blisset.

2. What other order he had I know not, but I am sure that he then acted by virtue of a forged warrant written as from Mr. Edward Stokes, his name likewise being subscribed unto it; but disavowed by that gentleman, as neither written by him, or by his consent; and conceived to be contrived by Thomas Webb, John Travers his brother-in-law. That Webb who is so notorious for infamy with Mr. H. White's late wife; this Webb being at that time in the company, and a very busy man among them. By which you may guess John Travers to have been a very unfitting man to be looked on as a credible witness, when as I could then, and can yet prove him guilty of such crimes which our law punisheth with pillory, loss of ears, sitting

of nostrils, and searing with an hot iron, and it may be rationally presumed, that he who will for an advantage make one man say what he never thought of, will likewise for a like advantage make another man do, what he never did.

And 3, whereas he adds that there were addresses made by me to him, I must tell them that this is like the rest. I make addresses to John Travers? I had known the fellow above thirty years before; yet cannot remember that he was ever so high, or myself so low, as that I that I should either need or fear him. And, says he, that I made addresses unto him? And these several addresses; whereas I am sure that I could have made him confess, that I was then never but once where he was; and then my business was to colonel Eyre, and not to John Travers. And next he adds that major Hunt and others came from my house. Here we have dead men and &c. my companions again; for although Mr. Hunt were then living, yet he was not at the time of my appearing before the Commissioners, in a capacity to vindicate either himself or me. And whereas he says that they had there drank very hard, it must be replied that it was more than John Travers knew whether they drank so much as a drop there, he saw it not, for he was not in the house, and therefore what he swears is either upon conjecture or hearsay. This is the third time that they have received such testimonies against me.

Sect. 8. I shall give thee an account of the story as it was; A party of soldiers (whereof John Travers was one) having taken up horses in the parish, amongst others light upon a horse or two of one Mr. Collier's, a gentleman then living in Dorsetshire, and a brother to Mrs. Hunt, whom he then came to visit; they being thus distressed repair to col. William Eyre for his assistance, which he promises, in order whereunto he repairs to Box, whither likewise repair Mr. Hunt, Mr. Collier, Mrs. Hunt, and two more of her sisters; who conceiving col. Eyre to be at my house, come thither, but not finding him there (after a very short stay) they make to another place where they understood he was, and I along with them. And I assure thee, that their haste was such, and their stay with me so short, that I cannot say that they ever sate down or drank so much as a glass of beer. And thus much would two soldiers at that time quartered with me in the house (who were more likely to know, and to speak the truth than John Travers) have deposed, if I could have had so much justice that they might be heard. Indeed John Travers was so far in the right, that one of the gentlemen was very high, which was this Mr. Collier, but it was in anger, and not in beer; and so I believe John Travers would have found him, if Mr. Collier had had him in a convenient place. I have told thee that we all came along together from my house to col. Eyre, where John Travers likewise was, and many more beside, where we made some stay, and had much discourse about

those horses, and other matters. And it is strange that none should observe this distemperature in all that time, but only John Travers who never saw us drink. But doubtless John Travers expected some monies for his pains, and therefore right or wrong, true or false, he would swear something to the purpose that he might seem to have deserved his wages. I hear that afterward he wished that he had never meddled in it, (so did Judas too) for that he had thereby gained the disrespect of some gentlemen; nor can I wonder if that all men should abandon and abhor his society that sticks not at forgery and perjury. But since he is dead, I shall say no more of him but only this, (and this *in terrorum aliorum*.) That notwithstanding he had been of a long time a contribution gatherer, a plunderer, an informer, a kind of agent and sequestrator, yet it is said that he died very poor. and notwithstanding he had been many times at sent from Slaughterford, and for a long time together, yet divine Providence so orders it, that he should die a beggar in that place where his infamies were known and practised; touching the manner of his death I say nothing.

SECT. 9. Next comes *Joan Pinchin* widow, and says that about two years and a half since, Jane Hendy told her that Mr. Bushnell had attempted to lie with her: and withal said, that she did think that most of your piouses were fleshly given. And saith, That about two years since Mr. Bushnell baptised Mr. Speke's child by the Book of Common Prayer, and signed it with the sign of the cross.

SECT. 10. You may remember that in the transactions of the first day at Lavington, I told you that Jane Hendy was summoned in as a witness for the Common-wealth. but I made no mention of her information then, conceiving that it might be better deferred till another time. She was likewise at Marlborough, May 8, and was sworn there likewise, her Deposition being taken in these words:

That she never heard of any lascivious talk from Mr. Bushnell, nor did he ever attempt to lie with her, nor doth she remember that she ever spake of any such thing to Joan Pinchin widow, or to any other person.

This her Deposition, together with her age and poor withered countenance, had in all likelihood satisfied the Commissioners as to that particular; but now William Pinchin at Lavington boldly interposes and tells the Commissioners that his mother this Joan Pinchin had told him that this Jane Hendy had said so much to her: on which master Chambers adds that if Goodwife Pinchin had said so, he was bound to believe her. And again at Marlborough, May 8, when there were papers delivered in by William Pinchin written by himself, wherein it was affirmed under her mark that Jane Hendy should say so, the Doctor adds again, That if Goodwife Pinchin said so, he was in conscience bound to believe her.

SECT. 11. Now by the Doctor's leave I conceive these words of his, 'I am bound, and I am

bound in conscience to believe her,' were not spoken by him either with discretion or charity.

1. Not with so much adviseness or discretion; for it is well known that William Pinchin had that power over his mother that she dared not but to say and to do as her son would have her; I believe so well known that the Doctor himself could not be altogether ignorant of it; and what an encouragement did these words of the Doctor give William Pinchin to teach his mother to say or to swear any thing, having this assurance given her before-hand, That whatever she said must be believed, and go for current? if she had not said so, yet he having such a hint given him and such a power with his mother, might easily order it that against her appearing before them she should attest it with confidence. When I consider the story of Herod and the Baptist, I am fully persuaded that Herod's unadvised promise, gave occasion to his wife's and brother's daughter to ask John Baptist's head. And (that notwithstanding they hated him to death) they would not have made such a request, unless they had been emboldened thereunto by Herod's promise; but now when such words shall fall from his mouth, 'Whatsoever thou shalt ask of me I will give,' and this promise confirmed with an oath; this is enough to make them fly high, and to bethink themselves touching some great demand, proportionable to his vast concession, and their vaster malice. One of the Evangelists reports it, that having such a promise, she consulted with her mother what she should ask, and there is no doubt of it, but that the consideration of such a promise moved her mother so to instruct her: and why might not these words from the Doctor, 'I am bound, and I am bound in conscience to believe her,' hearten up the son to instruct his mother what to swear, as well as those other words heartened up the mother to instruct her daughter what to ask?

SECT. 12. But yet in case that Goodwife Pinchin had said so, yet what sufficient grounds had the Doctor for so much confidence, 'I am bound, I am bound in conscience?' I shall allow it that the Doctor hath been a long time acquainted with her, that she may have entertained him and his often, and her carriage may have been such as to gain his good opinion of her; but yet all this will not amount to be a sufficient ground for so much confidence, that she should be so knowing as that she could not err from the truth, or so cordial and entire that she would not report a falsehood, for all Mr. Chambers knew she might be another woman than he took her for. And why might not the Doctor be mistaken in her as well as he hath been in many others? (women I mean, for there his acquaintance did especially lie, and these many of them such who had the hand over their husbands) who have followed him as far, and as oft as Joan Pinchin, and yet are now fallen off both from his doctrine and acquaintance? Nay, why might not the Doctor be mistaken in her, as well as he hath been in his friend and chaplain Blake late of Warminster:

no man can know what is in another's heart. Nay, why may not the Doctor be mistaken in her as well as many hundreds have been mistaken in the Doctor? Alas what just grounds of confidence have we that we cannot be mistaken in others, when as we are so often deceived in our own selves? When as the Prophet says that the heart is deceitful above all things, desperately wicked, who can know it? Doubtless, he speaks of the deceitfulness and small knowledge which every man hath of his own heart, as well as of the hearts of other men.

SECT 13 But yet (for all the Doctor's great confidence) others, who have had more and better means to be acquainted with Joan Pinchin in some particulars than I believe ever the Doctor had, have not met with so much upright dealing from this Joan Pinchin which deserves so great an encomium. I have heard of such that I have discovered her to be very nimble with her Irish, more nimble than became an honest woman. I have heard too from others who have been set by their parents (it seems they had cause to doubt her) to watch her that she might not mis-represent her self, and take toll twice, it was her own son William (as I have heard) that she had driven away in the custom from the mull, and certainly this could not be by any of her virtues. I love not to take in daughters, yet this I can say of my own knowledge, that she hath borrowed of me several and considerable sums which she hath neither paid me, nor will she confess that she ever borrowed them, and that she hath in money and account received several sums from me, which she will not acknowledge that she ever received. I lent her and her husband money out of my purse, when her son had beaten them out of door, they being utterly destitute, nor knew they where to go to relieve themselves, which is yet unpaid, nor can I gain any thing from them but base words and deeds in lieu of it. The Doctor may do well to advise them to make payment to me, (it is a piece of courtesy which he hath done for his friends in some other place as I have heard) or else let him abate of his good opinion of them. But if he will not credit me, let him ask his friend Mr. Stern what just and upright dealing he found with them, when he sojourned with them there? and what a reckoning they brought him in (as he hath reported it) for bread and cheese. [77] It is true indeed, that it is believed that Mr. Stern had better provision there than bread and cheese, and therefore was it false in him to report it so, but yet it is believed again that he either paid for that which he never had, or paid to a fugitive value than the provision came to, and that therefore the Doctor's good friend must be guilty of coining and cheating. We know that in the Decalogue that command, 'Thou shalt not bear false witness,' is in order immediately after that, 'Thou shalt not steal,' it may be that the prohibition is therefore so near, because usually the sins are so. He that hath stolen will not stick at a lie, nor is it any great wonder that such who have been

light of their lands, should be false of their tongues.

SECT 14. And now I shall add that these words, 'I am bound, I am bound in conscience to believe her,' were not spoken by the Doctor, with charity towards Jane Hendy, for the poor old woman had been twice before them before this time, and upon her oath (being never tampered with or prepared, as was William Pinchin's use, no nor so much as spoken with by me) deposed,

"That she never heard any lascivious talk from Mr. Bushnell, nor did he ever attempt to lie with her, nor doth she remember that ever she spake of any such thing to Joan Pinchin widow, or to any other person."

And now for Dr. Chambers (a man of so much reverence and learning) to say (when it had been good manners in him to hold his peace) that if goodwife Pinchin had said so he was in conscience bound to believe her, was (upon the matter) to say to this Jane Hendy's face, that she had twice forsworn herself, I said before, that the Doctor could not know so much of the widow Pinchin, but he might be mistaken in her. I now add further, that for my charge I knew, this Jane Hendy might deserve as good an opinion of her fidelity as she had of this Joan Pinchin, and is it not then a most uncharitable thing for such a one as the Doctor to pronounce the one as infallible, the other as perjured, upon such uncertain grounds? 'I am bound in conscience.' Be it the encouragement which this gave to William Pinchin, of which I have spoken already, what consternation and amazement must this needs bring upon all my witnesses? When as a word from William Pinchin, (who will say or swear any thing to do a mischief) as from his mother (who must swear and say as he would have her) shall in this Doctor's judgment render them under that notion is to be looked upon as persons perjured.

SECT 15. I put it with much sadness of spirit that these contradictory testimonies of Jane Hendy and Joan Pinchin (where none of necessity must be false) are both taken upon oath, one or other of them must needs be forsworn, and I believe that it most that it was so of my mind) it is so decided where the perjury lies. But I put it in the presence of our great God that there never was any such attempt to deceive me, nor so much is thought of, and therefore I cannot possibly be so uncharitable as to think that the poor woman upon no grounds, and for no purpose, should believe her self in such a manner. And now I said add further, that I believe that this and many other false oaths had never been taken, had not the Doctor by those words, 'I am bound in conscience' intimated unto them a kind of faculty, or dispensation of swearing, and that now they might be bold. And one thing further, this is to be false, as I am confident it was, and as it is very probable this oath being raised by such an intimation, 'I am bound in conscience,' If an encourager or an

abettor, or a persuader, he an accessory, I cannot acquit somebody (the Doctor may guess whom I mean) from being guilty of this, and many following perjuries. I remember that Ulysses lays a claim to all the heroic acts of Achilles, because that it was through his procurement that he went to the wars of Troy.

*Ergo opera illius mea sunt.*——Metam. 13.

And why may not these men be intitled to all the infamous actions which follow, since it was from them especially that they had their rise and encouragement?

Sect. 16. I must not forget one thing more: when the widow Pinchin had given in this testimony, I desired Mr. Bisset to ask her whether she believed it? To which she answered, that goodwife Hendy did say so. But this not satisfying, Mr. Bisset asks her again, But do you believe it to be true? To which she answers again, That it was true that goodwife Hendy said so: but this not satisfying yet, Mr. Bisset asks her the third time, But do you conceive Mr. Bushnell to be any such man? To which she answers, that she could not judge. Now I must tell the reader that not long before this, she having some discourse with several persons, ever acquitted me, saying that she believed that I was wronged, or to that purpose: but now she changes her note, and says, She cannot judge. Doubtless her own son William, or the Doctor (for I have heard that he was at her house betwixt April 28, and June 4) had instructed her, and taught her to fall short: and who might not he make the whole, as well as alter a part of it? It was observed that while the mother was on her examination, the son was in some agony and perplexity, which he expressed by rubbing, and wrestling of his face and head, fearing belike that his mother should miss her trip, or forget or mis-report those instructions which he had given her.

Sect. 17. But now some may say, it is very unlikely, if not impossible, that all this rumour should be raised, that all this stir should be made about or upon nothing, upon no grounds at all. And indeed I am of the same mind, I made it my business therefore to enquire of Jane Hendy, since this business was over, to recollect herself, and to call to mind what discourse or communication she had had with Joan Pinchin which might be wrested to such a construction. Whereupon she told me, that during the time that she was my servant, I entertained a minister in my house (he called himself Page) who pretended that he was beaten out of Ireland, affirming that he had there escaped very great dangers and sustained very great losses: Inasmuch that he was now very low, and both needed and desired the charitable relief of others. In order whereunto he desired that he might preach in my church, to which I condescended, which exercise and collection being ended, in regard that he made a great moan, I took him with me into my house, entertained him and lodged him all night: and (had it not been for his great importunity to be

gone early the next morning) it is like I might have entertained him longer; but it appears since that he therefore made such haste to be gone, because he had already (lying in a chamber by himself, where there was a trunk and some boxes open) possessed himself of his errand; for he had stolen several pieces of clothes, stockings, and other garments both of mine and others, which he took away along with him, We missed not these clothes till some days after; nor did my servants (for I was the last that heard of it) discover unto me any suspicion that they had of him until one had told them he had lately seen this Page about five miles from Box, lying sleeping on the ground, near unto an hedge, by which there ran a little brook; and that two (habited like women) were in the mean time washing and hanging out to dry, several parcels of clothes; adding further to my servants, that had they been there they might have chanced to have met with that which they had lost. This story Jane Hendy tells to Joan Pinchin, and was in some passion about it: for it seems that she had suffered in that loss; she speaks her mind likewise very freely touching Page and his laundresses; and to some who made themselves unwilling to believe that men of his profession should be of such a conversation, she adds to this purpose, that your pious (naming me no more than she named Mr. Byfield or the Doctor) might be fleshly given as well as other men. This is the sum of the story, as she hath reported unto me; and as she says this was all she spake to Joan Pinchin, neither did she (as it is in her Deposition) mention my name at all. And see now what a story the son, and the mother, together with the Doctor's encouragement, have made of it. I believe that the Doctor knows already that there have been such heretofore, who were much given to mistake, and mis-remember, and mis-report other men's words, and all for the worse, to the prejudice of him that spoke them; and I believe that the Doctor knows what sort of men they have been. To all which let me add only this, 'And thinkest thou that thou shalt escape that doest the same?' [Roin. 2. 3.]

Sect. 18. There is another branch in Joan Pinchin's Deposition, which I have not yet spoken to, which is this:

That about two years since Mr. Bushnell baptized Mr. Speke's child by the book of Common Prayer, and signed it with the sign of the cross, her son William's wife then deposing that she was then also present at the baptizing of Mr. Speke's child, and swears the same.

Sect. 19. And here I shall observe a wonder unto thee; That within six weeks a child should grow a year and three quarters old; (April 28, 1658,) for this is one of the children of which Obadiah Cheltenham spake at Lavington, and then and there affirmed upon oath, that I had signed it with the sign of the cross within a quarter of a year, it would be proved; it is likely he meant that William Pinchin's mother, and his wife, shall prove it. Here we have another circumstance for Mr. Bisset.

And here we have a story (such a one as it is) of a thing done about two years since. I shall desire thee to know that the child of whom they speak was baptized, Oct. 28, 1653, which was more than two years and a half before these Depositions were taken, and although that word 'about' may make it passable in some tolerable sense, yet it is in my thoughts that William Pinchin had some design in it that his mother and his wife should swear so indefinitely: for in this particular the space of six or seven months, nay of but a week would have very much altered the case. The Ordinance by which these Commissioners sate bears date, Aug. 29, 1654, and although it did look backward beyond the date of it, and questioned such things which were done before the law was made, yet it doth not look so far back as to Oct. 28, 1653. Then (nay on the last of Dec. 1653,) that might have been done with safety, which if one had done on the day following, he might have been questioned for; it might be therefore a design in William Pinchin to put it into such indefinite terms 'about two years,' it might be somewhat within, and under, as well as above; and such an interpretation as best pleased the Commissioners, (and that if Mr. Byfield and the Doctor could have procured it, should have been such as would have done me the most mischief) should have been put upon it: But of this Deposition I shall say no more, because he it true, or be it false, as to the matter of fact, yet as to the matter of charge it signified nothing.

Sect. 20. The next we have is the Deposition of *William Cottle*, who deposeth,

That when Thrift was killed, he did conceive him to be overtaken in beer, for that he could not scarce pull the rope of the bell without stepping into the fild; but where he had it, this deponent knows not. And saith also.

That about two years since Mr. Bushnell coming through Pickwick lane from Corsham bended to and fro upon his horse: and this deponent the morrow asking Brewer the inn-keeper what he had done to Mr. Bushnell, said, he was well enough when he went thence, having spent only ten-pence; but said he did use to fuddle a cup there now and then.

I conceive that the sum of this Deposition may be reduced to these heads. 1. Touching John Thrift. 2. Touching myself.

As touching John Thrift's ringing, and in what condition he was when he rang, I shall refer thee to the Deposition of another witness summoned in to appear in the same time and place by William Pinchin; which was this William Cottle's own brother, and taken in these words.

*Richard Cottle* of Box deposeth that Thrift aforesaid, ringing two or three pulls at the bell when he was afterward killed; this deponent did not conceive he was in drink, and having but the last week asked of him that gave him the rope, and took it of him again, (he being of the said opinion) this deponent doth the rather believe it.

Here you see we have two for one, and those this William Cottle's brother, and William Love his brother-in-law: who gave him the rope, and took it of him again; and therefore in likelihood might know more of John Thrift's condition at that time than any man.

Sect. 22. But now (had these Commissioners been pleased to suffer it) I could have made it appear, that at such time as John Thrift rang, this William Cottle was not below in the church or belfry, but above in the Tower tolling of the great bell: from whence it was as impossible for him to see what was then done below in the church, as it was for William Pinchin to see what was done at Box when he was about five miles off at Broughton.

Sect. 23. And then as touching the second branch of his Deposition.

That as I rode homeward from Corsham, I bended to and fro upon my horse.

Certainly this will signify nothing with sober men, but only a distemperature in the informer. The several postures and motions of the body, the variety of gait and garb, the carriage of the hands or feet of men whether on horseback or on foot, as they are little thought of by him that useth them, so I think as little regarded by any rational man that shall behold them: We look upon these, and such as these, as done without any mature deliberation: and therefore barely as such, neither matter of commendation or reproof: nor are they usually called human actions, although he be a man that doth them.

Sect. 24. And whereas he cites Brewer an inn-holder of Corsham as his voucher, I shall acquaint thee with the information upon oath, which this Thomas Brewer gave before the Commissioners, and shall after leave it to the reader to judge, how this William Cottle hath represented both him and me. I must tell thee that this Deposition of Thomas Brewer was not taken at this time at Caln, but afterward at Marlborough, July 1, yet because it relates so much to William Cottle's Deposition, I shall anticipate the day, and insert it here; It is in these words:

*Thomas Brewer* of Corsham, inn-holder, being sworn, saith, That he did never tell William Cottle or Henry Parsons afore sworn, that Mr. Bushnell did use to come to his house to fuddle a cup as they have deposed; nor was he distempered at the time mentioned in their Depositions. And says, that he have known him these ten years, and never saw him drink to excess, nor did he ever go from his house distempered with beer as this deponent knows; yet says, that he have often been at this deponent's house in Corsham, but seldom save in business for the children, to whom he is a guardian, or to the lecture, or the like, and says that he have been there three or four hours at a time in the deponent's said house with his tenants, &c. and have not drank more than a jug of beer, or a pint of wine.

Sect. 25. All that I shall have to say at present

is to the former part of the Deposition. That he never told William Cottle that Mr. Bushnell did use to come to his house to fuddle a cup. Here we have another sad story, contradictory oaths taken again. Of which (as I have said) of necessity one must be false. I am satisfied as to myself where the perjury lies; and it may be that the reader will be of my judgment before I come to the end of the story. It was at this time that we exhibited Articles of Exception against this William Cottle touching his credit and former conversation, every of which would have been proved upon oath. As,

1. That this William Cottle was a drunkard, and that on the Lord's day; and even in the time of divine service, he had usually seduced others to his house to drink. As

2. That this William Cottle was a thief, who, together with John Twyford the hangman, cut, carried and stole poles out of Hungerford Wood, supposing them to have been the minister's. As

3. That William Cottle was a scandalous and infamous person, who having been convicted for selling ale without licence, and other misdemeanours, and yet taking no warning, was by the justices of the peace sent to the House of Correction; from whence he made an escape, so that a justice of peace made him give bond to sell ale no more, because he could not otherwise restrain him. As

4. That William Cottle was a cozening and cheating fellow: for, putting himself into the office of a tithing-man, in the room of another man, he collected monies for the buying of drums and colours, which he keeps, or the greater part of it, in his hands, or else otherwise employs it. and suffers the cattle of one James Butler, for whom he was deputy, to be taken away by soldiers, untill full satisfaction were made. Inasmuch

5. That William Cottle was looked upon as one that regarded neither his word nor his oath, so that the Steward of the Leet discovering him, would not admit him (although he greatly thirsted after it) to serve in that place any more; conceiving him belike to be a person so unworthy and so unfit to be trusted, as that he was not held meet for so mean an office as a tithing-man. As

6. That William Cottle was a slanderer of the ministers, charging them in the general with greediness, and that he would trust none of them all: and that for instance he mentioned Mr. Chambers, who had left Claverton, and was gone to Pewsey.

Sect. 26. I say that all these Exceptions were then exhibited; and would have been every one proved upon oath; but my Council for that time waving all the rest, pitched upon the last, viz.

That William Cottle should say, that your parsons were greedy, and that he would trust none of them all, no not Mr. Chambers, who had left Claverton and was gone to Pewsey.

This Article was indeed, of itself, the most

inconsiderable, although, perchance, it made the loudest noise with them, because it reflected somewhat upon their Doctor. Now William Cottle being charged with these words, confidently denies that ever he spake them, being still upon his oath; affirming, That no honest man would justify that he had said so: and drawing his finger athwart his throat, seemed to intimate, that he would give any man leave to cut his throat, if it were justified.

Soon after which comes in William Rawlins of Box, against whom William Cottle could take no exceptions, and being sworn, saith;

That on Whitsunday last, soon after the morning sermon, as they were in the churchyard (he named the particular place in the churchyard, as likewise others who heard it as well as himself) William Cottle spake these words;

"That your parsons were greedy, that he would trust none of them all, no not Mr. Chambers, for he had left Claverton and was gone to Pewsey."

Which words when William Cottle had heard, without more ado he acknowledged that he had spoken, adding further, Why what if I did say so? The truth is, that the thing being considered barely in, or by itself, it mattered not if he had said so; for it was true as he said; Mr. Chambers had left Claverton, (nor was this the first time that he had left it,) and was gone to Pewsey, and this to his great advantage too, for the report goes that he is 300*l.* a year gainer by this remove. But now William Cottle having been sworn to speak the truth, the whole truth, and nothing but the truth, (and this oath always binding him whilst he was before these Commissioners, speaking upon his cross examination to my business,) and having upon this oath denied any such words to be spoken by him, and yet within a few minutes after, as our proverb goes even in the same breath, upon the same oath to confess that he had spoken them——! What greater or further testimony could these Commissioners have of this man's falsehood? or how could they look upon him as a credible witness against me, since he sticks not to forswear himself in their presence? Another circumstance for Mr. Blisset.

Sect. 27. It must not be forgotten, that Mr. Byfield kept much ado about this Deposition of William Rawlins; it is like enough that he was unwilling that it should be taken; sure I am that there was a kind of an heat stricken betwixt my Counsel and him about it; it may be that it was not only zeal to his friend the Doctor, which made him so earnest, but also respect unto himself, he rightly considering that in this saying, he himself was reproached likewise; for that the Doctor's charges might give occasion to men to enquire what a steadfast and settled man Mr. Byfield had been in his time; and how many removes he had made from that time he did officiate at Enford, till this time that he was now in the Parsonage at Colling-

born. But yet my Counsel prevailed, and, although with some ado, entered it was, and subscribed by William Rawlins who had deposed it. And yet (reader judge of their equal dealing with me) we have not one word of this in that copy of the Depositions which we received from their Clerk, and according to which we were to frame our Answer. I have often told thee that they had an *Index expurgatorius*, yet formerly he came only with his knife, or his pruning-hook, and took away only some boughs or limbs of a Deposition, but here he comes with his axes, and takes away both root and branch.

Sect. 23. It were not amiss to tell thee that John Travers, sitting by during this debate, and hearing and noting all the passages, observed it, and so did others beside, and, as I have heard, hath reported it elsewhere with some complacency, that Mr. Chambers did hang down his head the while; Now we know that hanging down of the head doth usually signify that there is shame and sorrow in the heart.

—Pudet hæc opprobria nobis  
Et dici potuisse et non potuisse refelli.

And whereas shame doth usually produce either amendment in the person so exposed: or else indignation, which the person so exposed, conceives against him whom he looks on as the cause of this exposure; I have some conjecture, that this wrought after the latter and worse way with Dr. Chambers; and that he did, for this, store up a good turn for me against he had an opportunity. Of which the readers shall have some account in due time and place.

Sect. 29. Next follows the Deposition of William Sanders; but because I shall have something touching him, and of the Doctor in reference unto him, which is very remarkable in the Transactions of the next day, I shall therefore forbear him till then.

Sect. 30. Next follows the Deposition of *Lawrence Cottle*, who deposeth:

That about one year and a half since, he and some others, that went to school with Mr. Bushnell, played at cards in Mr. Bushnell's house, when Mr. Bushnell took up one of the boy's games, and played it out for him at slam: after which some difference happening between the boys about their game, he snatched up the cards, and threw them into the fire and burnt them, and said he would have no more playing at cards in his house.

Sect. 31. And as touching this Deposition, I would fain know where the matter of charge lies? is it in this, That they played at cards in my house? I know nothing (all circumstances duly considered, and it was my care it should be so) that makes it either unlawful or inexpedient. The time was after supper; the company, mine own scholars; the stake (for any thing I knew) apples, or nuts, whereat in an harmless manner for some short time they might recreate themselves. If it happened otherwise (as the Deposition here says that it did) the be-

ginning of the differences put an end to the game. As I remember Mr. Byfield disliked it that I had not burnt the cards before, but delayed it till the end of the game. To which I shall say only this, that had they been filling or smoking with a tobacco pipe, I should have looked upon it as a thing so disingenuous and misbeseeming scholars, that I should have snatched it away and broken it without any more ado.

Next follows the Deposition of John Gibbons in these words;

*John Gibbons* of Box being sworn, saith, That about three quarters of a year past he played twice with Mr. Bushnell at tables in his own house, for good will only, and no monies. But saith that he was induced so to do at the request of this deponent.

To which we have ear in place and substance, the Deposition of *Peter Webb* in these words;

*Peter Webb* before sworn, saith, That sometimes before two years past, he have played with Mr. Bushnell at tables in his own house; but for no money.

Sect. 32. Now I would willingly be satisfied touching the matter of charge in those Depositions. For

1. Are these games *illiciti in se*? unlawful in themselves? or in their own nature! Then are they such at all times, in all places, and to all persons. Never man did, never man can use them, but in the very use of them he offends. But perchance they will say, that they are *illiciti quia prohibiti*, and though indifferent in themselves, yet in being forbidden they become unlawful. To this I shall subjoin, and if they be thus forbidden, it must be either by some old law, or else by some new, I believe that Mr. Byfield would not say, by any old law, and if he had said by the new; that is, the ordinance by which they sate, and according to which they were to act: I shall answer, that then these two Depositions signify nothing against me, for the ordinance in this particular makes only such ministers to be deemed guilty of scandal who shall be found frequent players of cards or dice; and certainly then no man will say that I played frequently with these men, when as they depose that I never played with them but once apiece. I am confident that Mr. Byfield and the Doctor would not be termed frequent preachers, if they had preached no oftener than it is proved that I played at cards or tables. There was beside a concurrence of all circumstances, which being duly observed I know not the casuist so strict which accounts them absolutely unlawful. For

1. We made it matter of recreation.

2. We used them sparingly. And

3. Covetousness (which is usually the poison of all games, so far as to distemper and enrage the passions) could not be possibly there, because (as it is in their Depositions) we played for nothing.

One thing more let me now add touching *John Gibbons*, and his Deposition, of which he



told me since I came to London, which was this, that the clerk Mr. Blisset's son had written somewhat as his Deposition which he never spake; as that we played at tables on the Lord's day, to which he would have had John Gibbons to set his hand, which he refusing, he takes the Deposition as is aforesaid; on which let me observe only this, that if John Gibbons had not read the Deposition over, he should have been made to testify that which was most false, which possibly some who could not read what he had written have done. This precious clerk having that faculty, that the witnesses shall say no more, nor less, nor any other thing than he will have them. So it might be to my prejudice, what they never spake shall be inserted; but if for my advantage, then what they spake plain and distinctly shall be left out. He told me likewise, that Obadiah Cheltenham bestowed a kind of a rebuke upon him, telling him that he swore but faintly, and that by his Deposition he had done them more harm than good.

Sect. 33. Next follows the Deposition of *Thomas Hayward*, who deposesh;

That about Paul's-tide last was two year. Mr. Bushnell did use some of the terms of Common Prayer at a funeral.

To which I say only this, that for any thing appears to the contrary, he might mean that I read 1 Cor. ch. 15.

Sect. 29. Next follows the Deposition of *Nicholas Spencer*, who being before sworn saith,

That oft times till within three quarters of a year past, there have been Stabball playing upon the Sabbath in the Parish of Box, and playing at fives upon the same day in the Church-yard; and that this deponent have often complained to Mr. Bushnell thereof: who have replied that it was the officers and none of his business; but saith that the said Mr. Bushnell have often reprov'd and rebuked his Parishioners for the same in his Sermons.

Sect. 34. And he might have sworn that oft times within three quarters of an year, the widow Pinchin's and her son's fulling mills, had been set on work on the Lord's day; and that on the same day their servants have usually hanged out their clothes in the rack. That on the same day Obad. Cheltenham came usually from Marlborough to his own house. That on the same day William Cottle, and Nicholas Nowell, have kept tippling in their houses. That Thomas Powell have set it aside for a day to make bargains in, because he would not spare the time on the week days. Nor have there (that I know of) been greater profaners of that day, than were those very persons that appeared against me. But what? Did Nicholas Spencer see these men at Stabball? Why had not he complained of them upon oath? He could have informed of his own knowledge, I only on hearsay as from him: and (whatsoever the practice of these Commissioners were). I

knew that our justices were so worthy, as that they would not look upon such an oath, as a sufficient ground for a conviction. And whereas he said that he complained to me of it; was I a magistrate to punish, or an officer to prosecute them? If he had complained to me of William Pinchin's parricide, of Obadiah Cheltenham's——chastity, of Cottle's profanations, &c. I must have given him the same answer as I did then, that it is the officers business to prosecute them, and none of mine. By Nicholas Spencer's own confession I acted as became one in my place, I often reprov'd and rebuked the parishioners for the same in my sermons. To which I shall add one thing more; I did (which I conceive to be most properly the minister's office in this business) publish th several acts and ordinances for the observation of that day: that neither the officers, nor any others might pretend ignorance of their duty in that case; but that the people might know what was forbidden them, and under what penalty it was forbidden them; and that the officers might know what they were to expect in case they neglected their duty: I say that these acts and ordinances I published oftener than the law required. Yea, I think, far more often than Mr. Byfield, or Dr. Chambers. But as touching the same Nicholas Spencer, I shall for present only desire thee to observe how he mends and makes some progress in his Depositions, how (William Pinchin-like) he fetcheth trip, in his second Deposition outgoing the first, and in this third overleaping all, as shall be certified unto thee by and by.

Sect. 35. I shall now put an end to the Transactions of this day. Being called in before them the next morning which was June. 5. I perceived that the Marlborough men, together with Mr. Byfield, Dr. Chambers, and another minister of Marlborough, I think they called him Mr. Hughes, were very sharp set; they had dispatched two ministers before; and the Doctor by his big countenance seemed not to have digested it that Cottle should upon his oath before such a company deny and yet acknowledge it, that he should say that your persons were greedy, that he would trust none of them all, no not Mr. Chambers, for he had left Claverton, and was gone to Pewsee; and therefore I was not to expect any kindnesses from him, because he might look upon me as the author of his exposal. And therefore I desired that I might have some further time granted for the examination of other witnesses; for I told them that the witnesses which were produced and encouraged against me, I could prove to be men neither of honesty, nor of credit, or truth. Which if I made appear, then their testimony (be it what it would) fell to the ground and became void of itself; for their Ordinance allows of none but of credible witnesses; and the old rule is, 'Recriminatio valet ad tollendum Testimonium;' that a recrimination is of force to take away a testimony. But to these words of mine, that I should prove these witnesses to be men of neither credit nor truth, Mr. Blisset

replies to this purpose, that it were strange there should be found such men that were of no credit or truth, for that the devil spake truth some time. To which words for the present I shall ask of Mr. Blisset, first, what he thinks of those words, 'He (the devil) abode 'not in the truth, because there was no truth in 'him?' I shall ask him, secondly, whether or no if the devil should depose a truth, his doctors or himself would look upon it as a sufficient testimony? I shall give the reader my present judgment touching these particulars in the Transactions of the next day. Only let me observe thus much unto thee now, that it seemeth to me that ordinary witnesses, be they whatsoever, come they from wheresoever, swear they what or howsoever, yet if serving Mr. Blisset's turn, they should have been welcome to him. Yet upon this my motion, to have further time granted me for the examination of other witnesses; I was bid to withdraw, and being soon called in again, my request was granted. But now whether it were because my suit was equal, or whether or no it were because Mr. Byfield and the Doctor had not there a full Quorum of fitting Commissioners (for although all their friends of Marlborough were there, yet I remember not that any of Sarum were) I cannot judge.

The Transactions at my Fifth time of appearing before them, at the White-Hart at Marlborough, July 1, 2.

Sect. 1. Having (as I told thee but now) a liberty granted to me to bring in my Exceptions both against the persons and the Evidence given in against me at that time at Calu, I had notice by word of mouth from the Commissioners Clerk, Mr. Blisset's son, that I was to appear before them at the White-Hart in Marlborough, July 1, next following. And thither I repair accordingly with such along with me, whose Testimonies (had they been equally heard, or duly considered of) would, with uninterested men, or such who had not been afore-hand resolved which way it should go, right or wrong) doubtless have so far prevailed, that it would have appeared that the Doctor's, Mr. Byfield's and Mr. Blisset's witnesses had been indeed such as I had formerly represented them to be, men of neither truth nor credit. Nor can these men have any just cause to distaste me that I call them their witnesses, when I have given my reasons of it. I have told thee already, that I believe that many a one which hath appeared before them, and have been sworn against me, had never so done, had it not been for their invitation and countenance; which as before, so at this time appeared most visible: for (besides others which I shall name by and by) at this time there appear for the Commonwealth William Pinchin, Obadiah Cheltenham, and John Travers, not as Witnesses, but as Solicitors or Promoters: and in their addresses (neglecting the gentleman to whom alone of right this business did belong) their applications were to Mr. Chambers and Mr. Byfield,

John Travers and William Pinchin, at the upper end of the table, standing at the elbow of the Doctor, and Obadiah Cheltenham towards the lower end, waiting upon Mr. Byfield; and this I conceive to be reason enough wherefore I call them their witnesses. There appear at this time beside these Nicholas Spenser, lately mentioned, and Nicholas Nowell, and Joan his wife: nor could I have any liberty to produce any Witnesses for mine own vindication, till the Depositions of the Witnesses for the Commonwealth were first taken.

Sect. 2. Of which (as I take it) the first was the Deposition of Nicholas Spenser in these words;

Nicholas Spenser of Box being sworn, saith that he being at church when Thrift was killed, observed that he was overtaken in beer by his countenance and absurd carriage.

Sect. 3. Touching which Deposition I shall offer to thy consideration these things:

1. That this Deposition as it is under their Clerk's hand, is not entered as a distinct Deposition by itself, but it is shuffled up together with that Deposition which he took at Marlborough, May 8, of which I have spoken already.

2. Whereas the Clerk puts this in the first place, as if it were the first that ever Nicholas Spenser took, yet that this was the last, and that his Depositions of May 8, and of June 4, of which I have spoken before, were both before this, to which I am now to speak. Now who or what should move the Clerk (in this and many other places beside) to this *disorderly*, to invert and confound the order wherein these testimonies were delivered or taken (whether it were design thereby to confound my counsel and us; that we should have a confused as well as an unperfect paper to answer to; that so having but a little time to answer unto it, by this inversion of order we might be the more perplexed; or whether or no they therefore placed the Depositions of their most gigantic swearers in the front, as the Indians set their elephants to face their enemies, that the world might think that all the rest were like the first: or whether it were from neglect or oversight) I cannot judge. Observe,

3. That this Nicholas Spenser had (as I have said) been twice before them before, that he had been twice sworn, and examined upon all the Articles, and could not remember any such thing. Now I have heard that it hath been deemed an undue course for a witness to be twice examined against a man. This being given as a reason, because that this is to draw him on by degrees to swear home, and to mend in his second Deposition what he fell short in the first. Nor is it unlikely but that such who have been once or twice called in upon Examination, and cannot remember any thing, may, if called in the third time, have so much aim given them, that they may remember somewhat amiss, but more of this by and by.

Sect. 3. But pass we to the Deposition itself.

1. He swears that he was at Church when John Thurst was killed. Now there are many others that are confident that he was not in the church when John Thurst came in and rang; but might come in afterward, when as it was reported that he was slain. But now,

2. Observe with me what a notable argument the man hath got, or what reasons he hath to persuade him to believe it; he observed that he was overtaken in beer by his countenance and absurd carriage. I have seen this Nicholas Spenser as fantastic and ridiculous in his carriage as I have seen any man: turning himself half round upon his toe or his heel, casting out his legs, throwing abroad his arms, and for his countenance I have seen him (as our proverb goes) as red as the roost cock, and yet I believe at that time he hath been as far from distemperature, as he was at this time from truth or charity.

We have had often mention of the death of John Thurst, as likewise in what condition he was in when he was slain. I shall here once for all give thee a brief of the story as it was. This John Thurst living in the parish of Box, and being my near kinsman, together with his wife, and some others of our neighbouring kindred, agreed among themselves (as I have since heard) to meet all together at Church at Box, and afterward to dine with me: there was neither feast prepared, nor any invitation made by me, as many of them yet living did depose before these Commissioners. Soon after dinner (I being to my chamber) this John Thurst speaks to some others to go along with him to the house of one John Hedges who was to be buried that afternoon, with a purpose to attend the corpse to church. But in the way thitherward, understanding that the company there expected were not as yet come together, they turn into the church, where there were some ringing; where this John Thurst takes a rope from one that was ringing, and soon after delivers it to him again, as you have it in Richard Cottle's Deposition, to which I refer you. Now soon after this he espying the Tower door open, arises from the seat to which he had retired himself after his ringing, and beckoning to one to follow him, goes up the stairs; as it is thought, to see how they tolled the great bell in the Tower, and being (in all likelihood) utterly unacquainted with the place, as he who followed him likewise was, going up a ladder about 12 rounds, whether by a blow from the trap door, or from the bell, or from the wheel, or by what other sad accident it is not known, he fell from the ladder as it is thought upon a piece of timber lying in a nether loft, and was taken up dead. This as to the manner of his death. Now as touching the condition he was then in, (beside the opinion of William Love, and the testimony of Richard Cottle) take the following Depositions.

Sect. 5. The first in these words,

VOL. V.

John Jones being sworn, saith, That at the time mentioned, when Thurst was killed, this deponent dined with him at Mr. Bushnell's, when he came there by accident, and drank no more than might do him good: and went thence to the church where he came by his death: but saith that he was not distempered with beer. And saith that the said Mr. Bushnell then went forthwith from dinner to his study, as this deponent conceived.

Sect. 6. Take another, given at the same time and place, and taken in these words:

Richard Pinchin of Box, being sworn, saith, That he was then also at Mr. Bushnell's at dinner, and speaks fully for the same purpose as doth John Jones, and says that there was no drinking after dinner.

Sect. 7. Take a third, given at the same time and place, and taken in these words;

Jane Hindy being sworn, saith, That at the time last mentioned, the said guests came all to Mr. Bushnell's by accident without invitation, as Mr. Bushnell told her, she being his servant.

Sect. 8. Let us now take a short view of these contradictory depositions, and see in which of them there lieth the greater likelihood of the truth, which will be done if we look on,

1. The quality of the persons who thus informed. And,

2. If we consider whether of them had the more likely means to know the truth in this particular. In brief, whether of these were more likely to know; and which of these were more likely to speak the truth. Touching William Pinchin, and William Cottle; and of their creditableness, you have heard something already; and more you shall hear anon; and as touching Nicholas Spenser, I have told thee but now that he had been twice sworn before, and could remember no such thing, as likewise what may be thought of such who have been at several times admitted to swear against the same person. I have told thee likewise what encouragement the witnesses had to swear any thing against me, and such most made of that would swear most desperately. So that Nicholas Spenser having been twice before them before, and now called in the third time, might by this understand their minds, and prepare accordingly, as I have heard of some juries, who having been often turned back, at last find as the Judge would have it; besides, William Pinchin's and Nicholas Spenser's intimacy grew daily more and more: it is not unlikely but that he might be then designed sequestrator in case that I were ejected, and that he might know as much. I am sure that afterward it so fell out, and this place of sequestrator he executes with great port and complacency; and who but William Pinchin to be his assistant in the business; and his house (William Pinchin knew how to bring him in a reckoning) appointed for the entertainment of their minister: and so might William Pinchin bid him call himself to mind, and persuade him that he was at church at that time so long, that at length Nicholas Spenser

might persuade himself that he was there indeed. As the confident cheater in the dialogue fancying that he saw a fearful fiery dragon in the sky, and reporting it to his companions, (what with pointing to the place, what with calling on them to look stedfastly, what with wondering at them that they were so dull-sighted as not to see a thing which was so obvious) at length so prevails with them, that they are persuaded that they see it likewise. The ground of this my conjecture is, because I have heard that William Pinchin hath practised with several other persons in the like kind. Nay more, the influence which William Pinchin hath upon this same Nicholas Spenser is so great, that even their own man and associate Mr. Stern hath observed it: and hath (as I have been told) reported it, That William Pinchin did lead Nicholas Spenser about the parish by the nose. Further yet, and perchance most especially, it must be remembered that Nicholas Spenser and William Pinchin are both tenants to the same landlord, a gentleman as yet under age, who (if, at all) hath been but seldom in those parts amongst them himself, and I think but few others in his behalf. Now there go several reports that William Pinchin and Nicholas Spenser have both been very bold with their landlord's wood and timber, felling when and where they had no license, and such woods and timber, of which by their good wills they would never give account, so that Nicholas Spenser knowing William Pinchin to be so dangerous a man to swear, might think it good for himself to strain himself somewhat to gratify so good a fellow tenant, lest otherwise William Pinchin should fetch trip, and in another place remember something against Nicholas Spenser which he would not be willing to hear of.

Sect. 9. But now as touching the second thing, the means which the persons swearing these contradictions had to know the truth in this particular. It is out of doubt that William Pinchin and William Cottle were not in sight, and it is doubted whether Nicholas Spenser were then in the church, and yet these charge us. But now it is out of doubt that both William Love and Richard Cottle were then in the church, and both saw and observed all passages, and yet these acquit us. Again, William Pinchin, William Cottle, and Nicholas Spenser, who charge him with being overtaken in beer, did not see him, nor any of the company beside on that day drink so much as a drop of beer, and yet we have others who dined with him, who kept him company afterward, who came along with him into the church, and saw him go to the Tower-stairs, deposing that he drunk no more than might do him good, and that he was not distempered with beer. There is no question that had John Thrift escaped that fatal accident, Nicholas Spenser would never have remembered his absurd carriage, or sworn that he had been overtaken in beer: But now his untimely end hath encouraged Nicholas Spenser to be far more uncharitable towards him than were the Jews towards those Galile-

ans, whose blood Pilate mingled with their sacrifices. John Thrift must be distempered, he must be a sinner above other men, because such a thing befel him. I could beside these witnesses have produced more witnesses of as unquestionable credit, who were then at my house likewise: but I cast with myself that if two or three were not enough, then were twenty too few.

Sect. 10. There was not then any profanation of the Lord's day at my house by excessive drinking.

I add, 2, no nor by feasting neither: for the Commissioners have the testimony of some, and might have had of more, that (as to me) they all came by accident, and without any invitation, and some of them were such who had been on the Lord's day many a time with Mr. Chambers at a greater distance on the like occasion.

Sect. 11. Next after the deposition of Nicholas Spenser, the deposition of Nicholas Nowell and Joan his wife was taken in these words;

*Nicholas Nowell and Joan* his wife being sworn, say, That Mr. Bushnell with col. Eyre and his man came to their house (an alehouse at the foot of Box-hill) and there remained about an hour and an half, where they drank nine jugs of beer, for which Mr. Bushnell paid 18d. and then drank Mr. Speke's and other gentlemen' healths, and say that col. Eyre's man drank one of the nine jugs, and they two drank now and then a glass of the rest, and no person else.

Sect. 12. This deposition I must tell thee, although the youngest of all, as being the 21st, yet in their clerk's copy it hath gotten the pre-eminence of place before many of his fellows. Now before I come to speak to the deposition itself, I shall premise a few things to thee which moved these deponents thus to swear, as it was at this time there testified upon oath before these deponents' faces, and confessed by these persons themselves. I had at that time several witnesses with me for my vindication, whereof some were wholly rejected, the depositions of others never entered, and of some their depositions entered, and yet left out of the clerk's copy, and of others their depositions entered by halves, as I have already told thee, and shall tell thee more in due time. But (although with much ado) I then got the deposition of Henry Sheyler to be both heard and taken; part whereof relating to this business was in these words:

"And this deponent further saith,

"That Nicholas Nowell before sworn told this deponent on Saturday morning last, that Mr. Travers offered to take off his bonds, that he might sell ale again, if he would appear and swear against Mr. Bushnell; and that yesterday he said he would not have appeared and been sworn, had not Mr. Bushnell at the time mentioned in Nowell's deposition, told col. Eyre of his gun, and said that therewith he used to kill hares and pigeons."

Sect. 13. Here I must tell thee first, That *Index Expurgatorius* hath been here with his pruning knife again; for Henry Sheyler then deposed;

"That William Pinchin was at the same time with John Travers, and made Nowell the same proffer and promises."

I must tell thee further, that soon after this Deposition of Henry Sheyler was taken, Nowell's wife, being before at a window and hearing what had passed, comes towards the Doctor, (for unto him were the most especial addresses made) and after a long and a low curtesy, adds,

"Yea, surely, if Mr. Bushnell had not, to pick a thank with col. Eyre, told him of my husband's gun, and said that therewith he used to kill hares and pigeons, we would not have been here to-day to have sworn against him."—And still continuing curtesying to Mr. Chambers, who then turned his head about, and looked towards her, she adds farther, That he had known her of a long time.

Now if it be true what the country reports of her, she hath in her time been a very virtuous woman, and of very credible acquaintance. Now when I heard these words so unexpectedly spoken, and that there was as much or more confessed than we desired to prove, I could not choose but smile. Which Mr. Byfield noting, was much displeased with, adding withal to this purpose, That it was not, or, that I should not find it a laughing matter. Indeed, it is true, it was no laughing matter. Christians ought to be sorry for others' offences, and such an offence I shall prove this to be, that it is no less than perjury. And yet thus much let me tell Mr. Byfield's friends, that if I were to blame for laughing at it, then certainly he and his Commis-sioners deserved no commendation for making use of this testimony; it is enough to make the evidence suspected, yet, and be it what it will, rejected too by equal judges. If it shall appear to them, and it was evident enough here, That the witnesses depose out of malice, or for hopes of reward. Now more, such informers are looked upon as guilty of falsehood, although they spake nothing but what was true. I wish that his surviving friends would take notice of the marginal quotations [1 Sam. xxii. 6, 9. xxii. 10. Psalm lii. 2, 3, 4] and practise accordingly, where they may see, that notwithstanding Doeg spake no more than what was true, and nothing but what he had seen and heard; yet David charged him for telling of lies, and with having a false tongue for it; giving us to know thus much, that it is all one to speak the untruth or the truth, if the truth be spoken in an undue manner. Proportionably say I, in case it had been true what they informed, yet (since the impulsive which incited them unto it, was spleen and revenge, for a conceived injury which I had done them some seven years before, and their aim some hopes that they might sell ale again,) may they be as justly taxed of falsehood and lying as Doeg was. Nay farther, Doeg's was a bare information, and no more,

and therefore David chargeth him only with lying and falsehood, but doubtless he would have had another name for it, if he had thus spoken upon oath. Nor can any deny it, but that if he who speaks a truth after that undue manner, speaks falsely; then those who swear a truth after that undue manner swear falsely. And could Mr. Byfield countenance, encourage and set on his turn with such vile practices as these, and yet thunder against me for smiling at them? Could he strain at this gnat, and swallow the other camel? I shall desire them to observe it, that our Saviour speaks the words to the Scribes and Pharisees, whom he calls these hypocrites; the Scribes went for the Lucwings, the Pharisees for the just, holy, or godly of the times, yet both these our blessed Saviour chargeth with blindness and hypocrisy, to give us to know thus much, that in case we be Scribes, never so knowing, yet if our eyes are always on others, and never on ourselves, we are no better than blind: or in case we be Pharisees, and of never so much pretended sanctity, yet (in case we should be rigid against others, if we be indulgent to ourselves, quick to observe and aggravate, and multiply and judge anothers' mote, and wholly in the mean time to forget our own beam,) we are no better than hypocrites; 'Ye blind guides which strain at a gnat, and swallow a camel.'

Sect. 14. But to return to the Depositions. Henry Sheyler hath deposed,

That William Pinchin and John Travers proffered to take up their bond, That they might sell ale again, in case they would appear and swear against me.

Now I must tell thee that (beside this hope, and their quarrel against me about the gun) I believe that Nowell and his wife, had another thing to incite them to appear against me, which was, that they looked upon me as one who had been a cause that their former license was taken away. For I must tell thee that (beside many disorders which I had heard of from this Nowell's house, lying not at the foot of Box hill, as it is in the Deposition, but in a remote place both of the parish and the county) there was a complaint made to me by the wife of one John Pitcher, living not far from this Nowell's house, which (as far as I can remember) was to this purpose: That her husband John Pitcher did usually haunt this Nowell's house, and that for whole days and nights together; that he there most wastefully spent his money which he earned at his hard labour; she his wife, and many small children, in the mean time wanting necessities. I think she then told me that her husband had pawned some of his household goods (as platters or the like) for beer; but this I am sure she then told me, that (what for some money in hand, what for the satisfaction of an old score) he was making over a small parcel of sheep which they had, to this Nowell, which if he did she says that she and her children must go naked. She told me further, That her husband coming thence in his distemperature, was very outrageous and

'unnatural' towards his wife and children - that he had been there the last night, that he came home but that morning, which was the Lord's day, and that she had left him at home asleep. I (hearing this sad story from her, and guessing both by her countenance and habit, that her condition was very lamentable, and knowing that she had many small children) bade my servants to take her in, to relieve her, and withal commanded that they should give her somewhat to carry home for her children, she having told me, before, that she had at home no sustenance for those small children, nor money to buy, but before she went away, I asked her what her husband's carriage was towards her, and her children, when he was himself and sober? she told me that it was both loving and careful, and that he was never so out of us as when he was set on by this John Nowell, whereupon I (considering the perishing condition which her poor small children were then in, as likewise doubting what might happen in case her husband should die, and find her missing, having such a woman as this Joan Nowell at his elbow) advised her for the present to repair to her home, to relieve her children, and not by any means to speak to her husband until he were sober: but then in a friendly manner to acquaint him where she had been, and what she had done: assuming her further, that if this were the order of Nowell's house, there should be a course taken with them without her further trouble. Now so it was, that sometime after this Nowell's license was taken away, and he forced to give bond to sell no more. The consideration of these things make me to have a strong conjecture, that Nowell's wife conceived that I had acquainted col. Eyre with their prodigations and disorders, as well as with her husband's sin, and that not having this opportunity, and the countenance of the Doctor (her ancient acquaintance) they were resolved to be revenged on us both, (I mean the colonel and myself) both for the one and the other.

Sect 15 But let us now come to the Deposition itself. To which I shall say, 1 That it is true that col. Eyre, his man William Daniel and myself, coming from Bath one evening alighted at this house standing near to the highway. The reason why we alighted was, because the colonel complained that he was a cold, the season being frosty, and the time about the 20th of Dec. 1650, and having a very good fire there made, we sat down for some time and warmed ourselves, col. Eyre's man, and another (I take it he was a son of this Joan Nowell, which she bore in the time of her former husband) in the mean time walking our horses without. I very well remember it, that we drank there. I very well remember it (for I entered it upon my book of disbursements as soon as I came home) that I delivered to this Joan Nowell 18d which I did at the motion of col. Eyre, he having at that time no silver about him: which we looked not upon as reckoning, as if in beer we had spent so much,

but in regard that we had there a very good fire, that there was one all the time without with our horses, as also for that we looked upon them as poor people, we made light of it, and paid it. Touching drinking healths, I am confident they swear it random, if any thing, it might be remembrances, which (I know not the reason of it) is both a name and thing, which passed among these Commissioners, with better acceptance, but if one or others then certainly must the latter put of their Deposition, That they two drink now and then a glass, be false; for in such cases William Pinchin hath told us the use is to put the healths or remembrances round: and if so, then there is no doubt but that they had that portion likewise, and I must tell thee that I have since heard (for at the time mentioned in the Deposition, I had very little acquaintance there, this being the first time that I ever was in the house since I came to Box, and indeed the only time, excepting that I was once there since, when I went about from door to door to beg for Mr. Blysser, Mr. Hunt, and Mr. Bayly, and the rest of Mulborough) that this Joan Nowell will not refuse her cup when it comes to her turn. Now as I have heard she will rather be on the one hand, taking two for the other one, why she hath done it (or shamed so long, till she hath made herself worse than a least, and not able to go but by the support of her neighbours, whereof one carried her back, and the other hauled along the woman, the worse luggage of the twain. I have been told too, that she then fell into a pool with her head forward, and it is like enough, had not her neighbours, William Westbury at whose house she lodged that night, and Thomas Druct, sen. with much trouble and labour, brought her to Box, she might at that time have made an end, and so the Doctor had lost both her testimony and civility.

Sect 16 And by their own confession our story there was but short (about an hour and an half) and our discourse such as did not in any wise savour of excessive drinking. I remember that I told col. Eyre of the gun, it stood then in sight in the chimney. I told him likewise, that therewith he used to kill hares and pigeons, but they seem to have forgotten it (a wilful ignorance no doubt) that I then told the Colonel, that therewith he usually killed hares and pigeons on the Lord's-day, it having been (as I have been told) a common practice with this Nowell so to do, and being met on a time with his gun by one who was going to church, and admonished by him to go along with him: this Nicholas Nowell gave him this answer, That he got not his living by going to church. And I assure thee what I told the Colonel, I therefore did it that Nicholas Nowell might by this private complaint to a justice of peace take warning, and that he without any further trouble to the magistrate, or charge or punishment to himself, would for the future without any more ado have become a new man. And whereas they cite this gentleman Col.

Eyre, as one that was with me at the same time at their house; I shall acquaint thee with somewhat which col. Eyre had formerly deposed as with reference to myself before these Commissioners, in these words:

“And this Deponent saith farther,

“That he hath known Mr. Bushnell this thirty years, and hath frequently kept him company, but never saw him drink to excess, and in his opinion have ever walked as circumspectly as might become a minister.”

So far that part of his Deposition. Now if col. Eyre never saw me drink to excess, then certainly not now at Nowell's. And (if they say that this our being at Nowell's might be at the time that he so deposed have slept his memory) I shall acquaint thee, That even touching this our being at Nowell's he was ready shortly after to depose to every one of the particulars in charge against us, according as I have presented the particulars unto thee; but Mr. Byfield and his friends had before they parted at this time from Marlborough taken a course to prevent that, for they made an Order, conceived to be on purpose to leave col. Eyre and myself under the infamy of Nowell's Deposition, without remedy or hopes of vindication of ourselves, That no witnesses which I should produce, should be heard or admitted of, of which I shall tell thee more in the close of the transactions of this day.

Sect. 17. I am yet behind with the Deposition of William Sanders, which I told thee because it did much refer to the transactions of this day, I should defer it till then. The Deposition is in these words:

*William Sanders* of Chippenham, shoemaker, deposeth, That about four years since he saw Mr. Bushnell come from the Bell in Box reeling to and fro three or four foot at a time; and saith that he believes that he was then drunk, for that he fell down, having been at the Bell four or five hours in the company of Mr. Cannings, and Mr. Edward Long of the Moor, and saith, that after he fell in the street he rose again, and so reeled home.

Sect. 18. Touching which Deposition, I shall offer to thy consideration,

1. The thing itself as it is reported.

2. The repute or quality of the person who thus deposeth. As

3. Some inducements which might encourage him to appear and swear any thing.

As touching the first, ‘That I came from the Bell reeling three or four foot at a time; that I had been there four or five hours; that I fell down, that I rose again and so reeled home.’

To this I shall answer, That if this were true, it is almost impossible but that others should see it as well as William Sanders. For,

1. It must be in the day time, else he could not see it, and if in the day time, others must needs see it beside, for the distance betwixt the Bell and my house is at least a furlong, and there are many houses and cross ways between them; and I believe that you shall

hardly go between those two houses from sun-rising to sun-set, but you shall see and be seen of many; and can he quote no body, not William Pinchin, or Nowell, or Cottle, or Nicholas Spenser, or Obadiah Cheltenham, or some such like, which saw it beside himself? It was at Caln that William Rawlin's wife appeared according to a summons procured by the information of William Sanders, he affirming that she had seen it as well as himself; but when as the woman came to depose, she could testify no such thing, but all on the contrary, and to my vindication and their infamy, if she might have been permitted to go on: But her name is not at all in the Depositions, it being the use to take those Depositions which imported matter of charge against me, but nothing which might represent either them or their witnesses in their colours. And

2. Whereas he says, that I had been there three or four hours, he must needs intimate to us thus much, that he himself had been at that house so long. But now considering the conditions of the woman which then kept that house, this is as impossible to be true as the other; for she hath often told me of it since, and I am confident that she will depose it, that she would be so far from entertaining this William Sanders in her house for four or five hours, as that by her good will she would not have admitted him to come within her doors.

Sect. 19. And therefore in the next place let us come to enquire into the conditions and qualities of this William Sanders; and see whether he were a person of such credit as the Ordinance requires. I shall first represent him unto thee as he was upon oath represented unto these Commissioners: and after give thee a short story of his infamies, every particular whereof, had the Commissioners been so just as to have given us leave, should have been proved upon oath likewise.

Sect. 20. The first in these words;

June 4. *William Eyre*, esq.; being sworn, saith that some time since, divers persons being impeached for committing divers robberies about Sandy-lane, William Sanders, before sworn, was accused to be one of them, and was at the assizes arraigned for the same, and found guilty by the grand jury, but in favour of life was acquitted by the petty jury.

The next in these words;

July 1. *Reynald Arlet* deposeth, That 15 years since, Sanders before sworn, committed sacrilege by cutting and stealing the church leads.

The third in these words;

July 1. *William Morley* deposeth, That under the pretence of a soldier, the said Sanders in the wars broke up this Deponent's brother's house, and took goods thence to a good value.

A fourth in these words;

July 1. *Michael Baylie* deposeth, That about eight years since, without provocation the said Sanders fell on his own father, and beat him, and said that he would make an end of the old rogue.

These are the very words of the Depositions as they are under the clerk's hand; although either not taken, or not copied out so fully as the witnesses deposed in very many remarkable circumstances.

Sect. 21. It must not be forgotten, that before these three last depositions were taken at Marlborough, the Doctor, belike having before either instructed William Pinchin what was to be done, or else having been informed by William Pinchin what he had done, beckons to William Pinchin with his hands, and twinkling of his eyes, it seems as doubting that William Pinchin had forgotten himself. Whereupon William Pinchin approacheth, and with a low congee delivers to the Doctor a piece of paper, which the Doctor conveys to Mr. Blisset with some such words, There is a testimony of this man's, meaning Sanders, behaviour; which was by Mr. Blisset read accordingly. The business was but short, and my thoughts so much upon this Doctor, that I little noted it; only I remember that there were the names of some whom I knew, set to it, and the names of others which I have heard of; of which (as likewise the false pretences by which this certificate was gotten) more anon.

Sect. 22. I shall tell thee here that William Sanders being questioned for the sacrilege mentioned but now, fled; and sheltered himself from prosecution, as the report goeth, in one or both of the armies; and that he stands answerable for this sacrilege even to this hour; and was it not an handsome thing in the Doctor to countenance this man against the minister, that had robbed the church? That instead of bringing him to condign punishment for sacrilege which he was then proved guilty of, he should then endeavour to bear him out in his perjury likewise? But there were men heretofore of such principles, I shall say more of them hereafter, that regilded not who they were they made use of, if servicable to their ends; that could saint, and anathematize, the same person accordingly as he stood with reference to their interest; if for them, then had they good words enough for him; if not, then he was none of the godly.

But to return to the present business; William Morley's deposition tells us, that Sanders brake open his brother's house under the pretence of a soldier; belike conceiving that as that pretence had sheltered him for breaking God's house, so it might encourage him to break open and rob his neighbour's. I must tell thee further, that Sanders doth as yet stand guilty of this felony likewise. (And this was conceived to be the reason why his certificate was at this time delivered in by his proxy William Pinchin, it being thought that Sanders himself was then in town:) for they thought that if Sanders himself had appeared in person he should have been apprehended for his former felonies, and so sent to a place where he should have been secured from starting.

Sect. 23. I love not to trouble myself or thee with the whole story of his infamies; let

the reader enquire after him in any place where he hath lived, and I believe that an especial token that he will be remembered by, will be some vile prank that he hath played; and the truth is, that when this Sanders appeared at Box-church-house where his father lived, we of the neighbourhood conjectured, either that he had done some prank elsewhere, and was come thither to shelter himself, or that he was come thither to do some good prank; in order whereunto it was observed that he was much accustomed to night-walking, as he pretended to go a fishing, and such was their credit, if any thing were lost, sheep or the like, and search to be made, the house which the officers did usually begin with was the Church-house, where this Sanders's father lived and harboured him.

Sect. 24. Yet with a prank or two of his being of latter days, being notoriously known and infamous, I shall here acquaint thee with. Sometime in the year 1654, I think it was about the 15th or 16th of September, this Sanders being at an alehouse in Pickwick in the Parish of Corsham, in the company of one Thomas Stockman of Bathford, he falls there to abuse him so far forth, as that he forced him to pay a reckoning for beer, &c. which Sanders had spent before Stockman came in, and afterwards following the poor man, going homeward, it being night, in a lane about half a mile from the house where they had drank, this Sanders overtakes him, knocks him down, robs and wounds him so grievously, that he lay sometime under the hands of a charitable person for his recovery: Inasmuch that complaint was made to a Justice of Peace, who grants forth his warrant, yet to be shewn against Sanders: but, I know not the cause of it, this warrant was never served upon him, so that he stands guilty of this assault and robbery, even to this hour. Thus much hath Thomas Stockman formerly affirmed, although at this time he would neither be deposed of it, nor prosecute Sanders for it; for since the time that he was robbed, and this July 1, this Thomas Stockman is fallen off to the Quakers; and therefore conceives oaths and prosecutions to be against his principles. And all this would have been testified to the Commissioners, if they would have given my witnesses leave to speak. I shall trouble thee with one passage more: I having some discourse since with a man of Corsham (one whom the Doctor knows, and pretends to respect much) touching this business, and having told him that Sanders was an especial witness against me; the man by way of wonder speaks to this purpose: Why they would not take the testimony of such a rogue as Sanders, I think, would they? and then tells me a story that Sanders on a time coming to his house, sits him down by the fire, where the man, having some occasion to go into another place, left him sitting, but at his return, which it seems was sooner than Sanders expected, he finds this Sanders with his feet standing on the fire, and his head and his hands up in the



chimney stealing bacon that hanged there. Nay, even at this time; his oath, and behaviour were such; that it bred astonishment even in those that countenanced him. Inso-much that John Travers sitting by, and hearing his Deposition, was overheard to say to this purpose; There is a rogue to swear, I could not keep him sober a day together, but that he would be drunk every day.

Sect. 25. And indeed the Commissioners might soon have perceived the truth, and credit of this man, if they would have noted, or been informed touching words by him then spoken, he being then upon oath: and those were touching his fidelity to the State, and his service done to the State: and the wounds (as he reported yet to be seen) which he had received in the state-service. Whereas it would have been proved, if they would have heard my witnesses, That he received those wounds when he was in arms against the State, and under the command of captain Thinn: and it is like enough that he had there continued still, had he not feared that they would have hanged him for breaking open and robbing houses; and this fear it was, and not any good will which forced him over to the other party, there to secure himself: and as John Travers reported it, brought a good horse with him; to give them some assurance that he durst not go back again to that party from whence he fled; and, as Sanders then affirmed, he became a soldier under captain Travers, a fitting match; like captain, and like soldier.

Sect. 26. But may some say, That all this, however true, makes him no more than a thief or a robber of both God and man; or a plunderer, or a parricide, a profane or a drunkard, or the like. But now this doth not wholly disenable his testimony; but could I make it appear that he had formerly forsworn himself, that then I had something to the purpose. To this I shall answer.

1. That by their instructions the Commissioners were to take the testimony of none but credible witnesses: and certainly it will appear by that which hath been already said, that Sanders to all uninterested men is nothing like it: we cannot prove it that those who bore false witness against Naboth, did ever bear false witness against any before. But this it was which rendered them suspicious, and with just Judges should have been cause enough to abhor them, because they were sons of Belial, wicked, mischievous, lawless men; men of so much known infamy, that they would not stick at any thing, which was put upon them, be it either to speak or to do, but in the general were ready for any wicked employment, and for the particular fitted themselves according to their occasions who employed them. Such who held a common shop for all comers, and would furnish their customers according to their likings. And here by these Commissioners leave, I shall tell them, that, there are other exceptions as well as former perjury; which with equal Judges, such who have the discre-

tion to know, and the conscience to practise just things, may render some witnesses unworthy of credit. In that famous Trial of Faulconer's, *ante*, perjury in the case of the Lord Craven, we have several proofs brought in touching Faulconer's former behaviour and credit; and all taken, a piece of justice, which I could not obtain from these Commissioners, as that this Faulconer had been a blasphemous debauched man, a cozening and cheating fellow, and one that had been several times committed for suspicion of felony; and all for this purpose, to make it probable that he who formerly had, for nothing, or but a small matter of profit, committed such horrid crimes, would not for some greater matter stick to forswear himself.

Sect. 27. And now I shall add. That the Doctor and his Commissioners had a better opinion of Sanders, than Sanders had of himself; for Sanders was so far conscious to himself, that his guilty conscience did so far mis-give him, as to make him doubt that his former infamies had been so odious, as that they had been enough to disenable him to give in any thing in point of evidence, and to take off all his testimony in all places whatsoever. For thy further satisfaction in this particular, I shall now acquaint thee with the false pretences and lies wherewith Sanders, or such as acted for him, got hands to this forementioned Certificate which Mr. Chambers so tenderly delivered in. After such time as Sanders had deposed against me, he like foreseeing that I should recriminate, he goes, or procures some to go to some of the Borough of Chippenham, and tell them to some such purpose, That he was to appear the next assize at Sarum as a witness in a trial: in order whereunto he desires their hands to a certificate touching his behaviour for half a year last past. Doubting, as it was informed, that otherwise his testimony would not be taken in regard of his former infamies, being both notorious and frequent. Such, as I have heard, was his relation; but I must tell thee that this relation was false in every particular. For.

1. Sanders dreads an assize or sessions as much or far more than he doth a Pest-house; nor can you fright him worse than to tell him that he must appear there.

2. This certificate pretended for the assize at Sarum (where Sanders did not appear, nor had he any business there) was delivered in three weeks before at Marlborough.

3. This certificate desired to enable him to take an oath, was framed and delivered in after the oath was taken. So that Sanders or his agents have herein notoriously falsified, and imposed upon his neighbours at Chippenham, as some of them (if I have not been mis-informed) have acknowledged: protesting against it, and complaining that he hath grossly abused them, in procuring their hands with a lying pretence, and afterward carrying them to such a place, and using them to such a purpose;

which was contrary both to his pretence and their intention. So that we have here that old piece of policy practice, '*Scelere velandum est scelus*,' a former wickedness covered with a latter; false-swearing plaistered over with a lie; by lying he procures this certificate, that he might employ it to cover his former false oaths. Now I do not wonder that William Pinchin, Nicholas Spenser, William Sanders and Obadiah Cheltenham should contrive and practise such unworthy courses; my wonder is, that the Doctor should so demurely put to his helping hand for the promoting of them; nay that he should be more forward than William Pinchin: and readier to call for it than William Pinchin was to deliver it in. But doubtless the Caln business did yet stick in the Doctor's stomach; there were a generation of men heretofore great pretenders to godliness, that were very touchy, and very implacable; and perchance before I make an end of this discourse, I shall make some observes to the Doctor of the Agagite in the Old Testament, and the Scribes and Pharisees in the New.

Sect. 28. And now for a full answer to that question, But can you prove Sanders to be perjured before? I shall say that readily I cannot, perchance, nor none beside: and this is the reason of it, because it is believed that this was the first that ever he was admitted a witness upon oath against any; and it is like enough that therefore he swore not himself before this time because that before this time he had no opportunity: the want of which we know hath restrained many a one from wickedness, which otherways they have had a mind unto. By his own acknowledgment he looks upon his credit as much crazed, otherwise he never would have importuned for this certificate. I think it be not usual for men to carry their certificates with them in such cases to any Assize.

Sect. 29. But the Commissioners (being belike pleased with his Deposition, because he had sworn as they would have him, and having in him found such a one as they had looked for of a long time) were by any means willing to preserve his reputation; in order whereunto the Doctor (as I have said) delivers in the certificate: Mr. Byfield, Mr. Bayly, Mr. Hunt, thwart with, interrupt and turn back my witnesses, that they might not inform how infamous Sanders had been. And Mr. Blisset (he loves to have something rare by himself) to rebare the edge of the Depositions of col. Eyre, Rainold Arlet, William Morley, and Michael Bailly, says, that those offences were committed long ago, and that since he, that is, Sanders, might become a new man, or to some such purpose. But now I would fain know of Mr. Blisset, when this reformation began in William Sanders? or (if that question may seem to signify nothing) by what testimony in his life and conversation hath this Sanders evinced it, that there is any reformation at all wrought in him? As I remember, sir Water Raleigh rejects the book of Judith from being so much as Apocryphal, because he cannot find any time, age, or

century wherein to place it. And I doubt me that Mr. Blisset would have as much to do to find out the time when William Sanders reformation began, or any thing that doth resemble it, unless he means that his oaths against me have merited so far as that his name doth now deserve to be put into red letters. And tell me Mr. Blisset, when did his reformation begin? Did it begin when he was before you at Caln? I have told you already, and had proved it (if they would have heard my witnesses) that he then forswore himself in your presence; affirming then upon oath, 'That he had received those wounds in the State's service, which he received in the king's; or in a drunken fray at Chippenham; or did it commence as his certificate was delivered in at Marlborough? I have told you already by how many falsehoods and lies he obtained it; no signs of amendment these, no nor of change neither, unless the change be for the worse. Besides the man whose house he brake up and robbed at Swainswick hath since told me:

That he then took from him to the value of twenty marks, that he and his fare the worse for it to this hour.

Sanders in the mean time who hath robbed him, and spent, or worn out, or otherwise disposed of his goods, flouts it abroad, bears it high, and is so far from making this man any part of satisfaction, as that he comes not near him so much as to acknowledge that he hath done him any wrong. '*Anne sunt hæ vestes filii tui?*' Do your reformatoes, your godly men go thus clad? are robberies, and lies, and perjuries proper arguments of a reformation, Mr. Blisset? Do grapes bear thorns, or figs thistles?

Sect. 30. And now Mr. Blisset must give me leave to reply upon him, and say, that if William Sanders were such a villain so long ago, and yet no amendment perceived in him, what an overwaxed and overgrown monster may he be by this time? To what an height of wickedness may he be mounted up unto, that was guilty of sacrilege when as he was not much above twenty? I remember that Medea in the Tragedy, meditating mischief and revenge, studies to do something which was answerable to her years; conceiving something more than ordinary to be proportionable now, because she had committed several strange wickednesses when she was but a girl. '*Hæc virgo feci*' thus and thus I did, thus I murdered my brother, after this manner I deceived my father many a year ago, when I was but young: but, '*majora jam dicent scelera*;' greater wickednesses may be expected now from me, now that I am at full growth, and am both a woman and a mother. Proportionably say I, this William Sanders might (beside many fair inducements from the Commissioners and suborners) encourage himself to some notable villany from this, that he had been so infamous so long ago; and might say to himself, that it is but a little more than what I have done already, that I am now about to do. I have

already many a time, and often broke those commands, which enjoined me not to profane the Lord's day, not to dishonour my parents, not to kill, not to steal : and it is but a little more, if for once I break the next command likewise, that says I must not bear false witness, and swear falsely against a minister. And now that I have done with Mr. Blisset as touching Sanders ; let me add something to Dr. Chambers, as with reference of the same person. I have told thee that at such time as (amongst other notorious infamies) we had proved Sanders to have fallen upon his own father, to have thrown him down, and beaten him, saying, that he would make an end of the old rogue ; Mr. Chambers calls for a certificate, and promotes it in this Sanders his behalf. And this was the second time wherein he shewed himself very forward either to countenance or defend such who by the law of God had forfeited their lives. 1. In the behalf of William Pinchin ; and here in the behalf of Sanders : making those crimes to be but small differences in the one, and no great matter in the other ; which God's law looketh upon and punisheth as horrid, barbarous, and unnatural. And since the Doctor hath thus appeared in the behalf of such persons, he must give me leave to tell him a story. It is reported that when Caracalla had murdered his brother Geta in his mother's arms, he practised with Papinias at that time a famous lawyer, to defend or extenuate the fratricide before the Senate ; of which foul murder the lawyer refused to undertake the patronage, giving this reason, That it was easier for a man to be a parricide than to defend it : and this with such resolution, as that it is said that he lost his life for his refusal. Now I question it, whether Dr. Chambers would in such a case have been so backward as this unbelieving lawyer was ? I believe that he would not, my reason is this : he that shall (as the Doctor did) look upon a son's cozening, cursing, frequent beating of his parents, after a barbarous manner throwing them down, laying hands upon them, taking of them by the throat, drawing his knife upon them, calling them old rogue, and threatening to make an end of them, as only some small differences, or matters not much to be noted, or easily to be excused ; may rationally be conceived to think it no great matter if he had actually murdered them. But the reader must remember, that in those days Parricides were very frequent, and in great credit ; yea, and that then the Doctor, and his Commissioners, acted by a power which had murdered our king, the common father of us all, and many of their brethren beside. Yea and farther yet since that present government by which those horrid parricides were committed, was that which impowered these Commissioners and doctors to act, and that a strict enquiry was by them made, who were disaffected to it ? and a severe punishment inflicted on those who were found disaffected to it ; we may safely say, that even these men Commissioners and

VOL. V.

doctors did approve of those wickednesses which the other had committed ; and by approving of them, confess themselves to be some of those parricides. The blessed Reformation being then so much improved, that the breach of the fifth commandment was accounted godliness, but the observation of it scandalous.

Sect. 31. William Sanders informs that Mr. Edward Long of the More, and Mr. Cunnings were then and there with me at the same time. Now this is the third time that this Mr. Long's name hath been mentioned to his disrepute long after he was dead. Twice before by William Pinchin, and the third time by William Sanders ; indeed I think I may safely say all these three times by William Pinchin, for that Sanders and Cottle were then at Caln, both enticed by William Pinchin before they swore ; who (as I have been told) wrote down something which one of them never spake, and yet he hearing it, was (since William Pinchin had written it down) content that it should go so ; so that we may guess that these swore not according to their knowledge, but according to their lesson : Obadiah Cheltenham, and I think John Travers, being at that time conjudors with William Pinchin in the same business. This gentleman Mr. Long was then dead, and so could say nothing for himself or me : yet thus much I am confident will be testified by men yet living, who knew him well, that for four, nay five, nay six years before this Deposition was taken, it was even impossible for Mr. Long to be such as this Deposition represents him, a drinker to excess : as I have said, he was buried in Decemb. 1651, and for a long time before lay under a lingering and wasting consumption, which at last brought him to his grave : and this was so visible to his friends, that in case he had been inclined to intemperance, yet they would have withheld him even for his health's sake. It is like enough I might meet him at that house, and like enough it is that I might make some stay there with him ; and if they ask me why, I shall tell the Commissioners and doctors that the occasions that drew me thither, were far more commendable, and my actings there far more clerk-like than theirs have been at several inns, at several places and times, for a longer time together than is mentioned in Sanders's Deposition. It is too well known, that there were at this time many unnatural differences betwixt this Mr. Long, his mother, and brother, which were heightened so far as to some suits of law ; that these differences caused a great alienation of affections betwixt them, so great that (although but three) the same house would not hold them ; for the composure of which strifes, there were many (and some persons of quality) that travailed much in it : and it was the pleasure of some of them to take me along with them, as one who was well known to all the disagreeing parties, and well thought of by them : in order to a composure I was sometime with one party, sometime with ano-

ther, and sometime in one place, and sometime in another, and that for more hours together then are mentioned in the Deposition. And that this was the business which drew me to Rainald's house at this time, and occasioned me to stay so long there, and that I was not at all distempered with beer, would have been deposed by Mr. Canion mentioned in the Deposition, who was then and there all the time, and heard and saw all that had passed, but him (beside many other very material witnesses) they would not admit of.

Sect. 32. And I have now presented thee with all the Depositions against me as I received them under their clerk's hand : and I make no question but the reader (remembering how many Depositions I have charged them with which they never took, how many Depositions were taken but never entered, and how many Depositions were entered by halves) will take these for the greatest and worst which they had against me. To which, (beside what I have already observed) I shall offer to thy consideration some few things more. 1. Whereas there is mention made of my being at Bayly's and Rainald's alehouses, and of my drinking there, I shall tell thee, that I had both the women who keep these houses (being both very antient and their husbands dead) before the Commissioners, who were there sworn, but their Depositions in the clerks copy very much contracted, and are only in these words.

1. *Sarah Rainalds* who keeps the alehouse aforesaid says that Mr. Bushnell seldom came to her house but in parish business ; nor hath he been there this half year, and the last time not to drink.

2. *Elizabeth Bayly* who kept the alehouse aforesaid, being sworn, saith, that Mr. Bushnell never came to her house (as she remembers) but upon parish business for making rates or the like : but saith, that he hath not been there this two years past.

This is every word which we have as deposed by them, when as it is well known that their Depositions were very much longer. I pass by that part of Sarah Rainald's Deposition, where she informs, that I was once there in company when the reckoning came to two shillings, and to Mr. Byfield, who asked how many there were of us ; answers that there were about sixteen, and besides they had tobacco : which passage the clerk noted, although he did not take it, and to Mr. Byfield who somewhat scrupled the reckoning, says (looking up into Mr. Byfield's face) that there were sixteen, and that they had tobacco too.

Sect. 33. But now the question which I desired might be proposed to them both was this, Whether either of them saw me distempered with beer at any time, or drinking to excess in their houses ? Which question was proposed to them both ; and they both answered No. If there had been any such thing, that I had drunk hard with Mr. Long or any other, they must needs know it ; and had they known it, I am confident that they would not have forsworn

themselves to conceal it. I know not whether it were at this time against them, or at another time against Thomas Brewer, that Mr. Byfield took exceptions to this purpose !

That they were parties being alehouse-keepers, and therefore not likely to speak the truth, because it might prove penal to themselves for entertaining any too long, or letting them drink too much.

Now to see the disposition of that godly man ; he would not believe that any swear truly, but such as swear as he would have them : To do a mischief. With him no witnesses were credible but desperate ones.

Nay, to see the abundant charity of that man ! I presume that he conceived these women to have some understanding of an oath, otherwise he would not have admitted them to swear, and yet he sticks not to imply that they would perjure themselves to save their five shillings a piece. I had it not at that time in my head, but now let me mind them of one thing more, of which I have some confidence, and it is this. That had these women by virtue of those oaths which they had then taken, been demanded, whether they had never seen William Pinchin drinking to excess in their houses ? They must have answered, that, although much against their will, when they knew not how to be rid of him, he hath been drinking, and smoking, and quarreling, and driveling, so long, that he hath made himself worse than a beast ; yea and that, this would have been proved too, he hath there disgraced himself, I say not into his hat, but as seemly as one that uttered his mind, having overcharged himself with wine and quince pie.

Sect. 34. I had at this time, and before, several witnesses with me which I desired might be examined upon such queries as should have been proposed unto them, but a word of exception against them from William Pinchin the solicitor, and Mr. Byfield the advocate soon silenced or put them all by ; and thus they stood no less than four at this time, some whereof would have told pretty stories of William Pinchin, John Travers, Obadiah Cheltenham, William Cottle, William Sanders, yea perchance of the Doctor too, if they might have been heard ; which doubtless William Pinchin foresaw, and therefore was so forward to stop their mouths ; Mr. Byfield and the rest ever seconding him, having thus pretence for what they did, that what those who deposed against me was for the Commonwealth and present government, but that those who would have deposed for me, was against the Commonwealth, and against the present government.

Sect. 35. But amongst others, there appeared for me at this time Henry Sheyler before mentioned, whom William Pinchin stoutly opposed, alledging, that he was a drunkard, and that there had been two bastards laid to his charge. To which the other stoutly replies, that that charge might be false as well

as true; but put him in mind of an attempt of a rape made by this William Pinchin upon a woman near Bristol, when they two were in arms in the king's army: and had he not been taken off, pretending this was nothing to the present business, he would have told the Commissioners such a story of their witness and solicitor William Pinchin, naming the time when, the place where, the manner how, together with other circumstances, so filthy, and much worse than beast-like, that I remember not that I have in any author, either sacred or profane, met with a story to match or parallel it, unless that Lam. 5. 11. come near it; but this was quashed, and Henry Sheyler permitted to proceed, which he did in these words:

That on Saturday on Watson week last past, he went to enquire for William Cottle, whose wife told this deponent, that he had been three or four days running after William Pinchin to witness against Mr. Bushnell; upon which William Cottle coming into the house told this Deponent, that William Pinchin promised him, that if he would swear that Mr. Bushnell came drunk from Corsham he would make him parish-clerk and register of Box. However if he were not ejected, he should be register. And then said farther, that if he should swear it, he should offend the gentlemen, if not the farmers. To which this deponent by reply bid him speak the truth; upon which the said Cottle affirmed, that he could not swear that he ever saw Mr. Bushnell distempered with beer: Yet the said Cottle then affirmed that he had now an opportunity to be even with Mr. Bushnell for permitting col. Eyre to send him to Bridewell for selling ale without licence.

Sect. 36. Some few things I shall here offer to thy consideration touching this Deposition of Henry Sheyler.

1. That William Cottle's wife told him that her husband had been three or four days running after William Pinchin to witness against Mr. Bushnell. Now so much she had said before to Anthony Balden, and before her husband's face too; and thus much was testified upon oath before the Commissioners sitting at Caln by Anthony Balden; but it seems (according to the custom) either never entered, or else *Index Expurgatorius* hath dashed it out.

2. William Pinchin offered to make him parish clerk and register, &c. Now these were places which to mine own knowledge William Cottle greedily thirsted after, and made great suit for, but was rejected for both; we conceiving him to be very unfit to bear any office about the church, who had been formerly thought unfit to serve so much as for a tything-man. I must tell thee further that there was was some such trade driven likewise betwixt this William Cottle and John Travers. For William Cottle being summoned to appear before these Commissioners by this John Travers asks him, Who should pay him for his day's work? To whom John Travers replies;

That if Mr. Bushnell were ejected, he would

see that he who succeeded him should pay him; but if Mr. Bushnell were not ejected, that then he was likely to lose it.

A pretty bait for such a fellow, and questionless enough to make him fetch trip, or (as Obadiah Cheltenham instructed him) to swear outright, for otherwise he was likely to lose his present labour, and expected reward; and that this was discoursed betwixt John Travers and William Cottle was testified on oath before the Commissioners now sitting at Marlborough by Mary Bayly; but either not taken, or else *Index Expurgatorius* hath been here again. And here let me observe this unto thee, how that William Pinchin and John Travers have their varieties of baits and flies suitable to the appetites of their fish. (We know that Cataline had such heretofore; yea Mr. Chambers, the chief priests and elders made use of the like, Matth. xxvi. 61, compared with Luke xxiii. 2.) Now they knew longed to have his bond up that he might sell ale again, and therefore they promise him,

That if he will appear and swear, that shall be taken up.

William Cottle sore longed for these offices, and therefore William Pinchin baits for him with these promises;

That if he would swear that Mr. Bushnell came drunk from Corsham, he would make him parish clerk and register.

Sect. 37. It hath been observed that there are four things especially which cause false accusations, malice, obsequiousness, coveture, and covetousness; we have no less than all these discovered in this William Cottle here.

1. Covetousness. The register's and clerk's place, together with 5*l.* beside, were promised him as his reward; and he must swear that I came drunk from Corsham, that he might obtain it.

2. Obsequiousness. He seems little to regard it whether he swore truth or falsehood; but whether he should please or displease. If he should swear it, he should offend the gentlemen, if not the farmers.

3. Malice, and indeed leavened, stale, and soured malice; and such on which the sun had gone down many an hundred time. That he had now an opportunity to be even with me, for permitting col. Eyre, to send him to Bridewell for selling ale without licence, which happened about September 1653.

4. Coveture (if it be not somewhat worse) for he filisly chargeth me of his crimes, and he therefore chargeth me with them, because I had laboured to suppress them in him, when as he was guilty of them; like the elders in the Apocryphal story of Susanna; because I would not consent or suffer him to practise profanations, and other disorders, he chargeth me to have been a practiser of such.

Sect. 38. I am now willing to put an end to the transactions of this day; only I shall tell thee before, that at this time it appeared that they had somewhat overshot themselves: (an usual thing for such Politicians) and that it was

in some sort long of themselves that they had not their will of me so soon as they desired. I have told thee already that Mr. Byfield had taken order formerly that we should not in any wise have any copy of the Depositions, which at this time stood us in some stead, for the Doctor and he had then a strong party, (yea and if not a Quorum, yet a major party) for them. Their friends of Marlborough, and some one of Sarum, Mr. Phelps, were at their elbows, who no doubt had it in their thoughts to have made a quick dispatch with me; but my counsel opposed their sentence then, because we having no copy of the Depositions, could not possibly give in any Answer or plead to the Charge. The Evidences were long, and could not readily be summed up either by my counsel, or by him which was for the Commonwealth. This obstructed them at that time, and for the present the business was suspended.

SECT. 39. I heard the next morning, that my next appearing should be at Sarum about the Assize time shortly then to follow; but soon after I had word brought me, that it should be before that time and at Lavington: I understood likewise that Mr. Byfield was the cause of that alteration; for (having been for some time absent, and at his return into the room understanding what had passed) the man began to be in some passion, and clapping his hand upon the table, he fiercely tells them to this purpose, That if that order stood (the order made in his absence) or if I were not ejected, he would sit no more amongst them. Whereupon (for as I have said he had then a major party) that former order was reversed before the ink were dry; and I being called in, Mr. Blisset read a new order to me to this purpose:

That my next appearing before them was to be at Lavington, July 14, where I was to have my final judgment; that I was not to bring in any more witnesses for myself; but that they for the Commonwealth might bring in as they pleased.

Whereupon for that time I had my discharge, but I looked upon myself as condemned, and that this was only a reprieve from execution for so many (that is about 12) days.

The Transaction sat my Sixth time of appearing before them, July 14 and 15, at the Antelope in Lavington.

SECT. 1. Although I looked on myself as a condemned person, having now no liberty left me to speak for myself, nor any beside to be heard in my behalf. But that all that were or would be against me, had not only a liberty, but a kind of invitation likewise to speak their pleasure of me, with approbation: and therefore might conceive that this summons was only that they might undo me with the greater reproach; every son of Belial being now encouraged to wound and insult over me, now that my hands were bound, and my mouth stopt; yet to Lavington I repair: Expecting that some far sought and prepared youths would have appeared, and have sworn up to the suborners' instructions,

and the Commissioners' desires. When, lo! there appear for the Commonwealth, only Wm. Pinchin, Obadiah Cheltenham, Nicholas Spenser, William Cottle, and one Brewer, I think his name be John, that lived then either in Corsham parish, or at Weaver-Mill. Of these William Pinchin and Obadiah Cheltenham, as formerly, solicit the business; and unless it were in order to that; or his sequestratorship, or to hear his own commendations, I know not what it was which drew Nicholas Spenser thither. But there were only two prepared to swear. This Brewer and William Cottle. But now as touching Brewer's Deposition, as I remember, that was never taken by the Clerk; but as Brewer spake, Mr. Byfield wrote down something in his note-book, but what I know not. A story it was he told about an health or remembrance drank in col. Eyre's house, and that I was then present in the room, and he likewise as a servant to col. Eyre, but that I drank that health he could not depose: Whereupon Obadiah Cheltenham (being belike displeased, because he had sworn so much short of their expectation,) addresses himself to the Commissioners, and tells them, that he (that is, Brewer,) had represented it otherwise unto them. So that it seems, that they had the catechizing of him before he came to swear; yea, and possibly this might be done, when as they, that is, William Pinchin, Obadiah Cheltenham, John Travers, met somewhere at a kind of a feast, where, as I have heard, Obadiah Cheltenham being a small clothier, William Pinchin having fulling mills, and Brewer being a fuller; this Brewer had some promises that he should be set on work by them. Another bait suitable to the appetite of their fish. But it seems that Brewer being at this time under another influence, had forgotten his lesson, and spake not as they had taught him, but somewhat of the truth, and somewhat which was false: for he then and there reported upon oath, That at the time aforementioned he was then in col. Eyre's house, and his servant; of which falsehood he was then convicted by col. Eyre himself, at that time and place present, who then affirmed, which the other could not deny.

That this Brewer had never been any servant of his; that he had not found him meat and drink, or paid him wages, which he should be unwilling to owe to any servant.

But it seems that the occasion which drew John Brewer to col. Eyre's house at this time, was this: it happened that this Brewer ran a hunting after their hounds that day, and so afterwards thrust himself into the house for a meal's meat, and it is not unlikely, but that he might be so officious as to make himself a waiter until his turn came to dine. But now the information which col. Eyre gave, touching Brewer's Deposition, wherein he largely insisted on the company there present, as likewise the occasion on which that discourse began, as likewise the time and place where it began, and from what it had its rise, as likewise what he would have informed touching our being at

Nowel's house, in order to his own vindication and mine, was at this time wholly suppressed : because contrary to that Order which they had formerly made, viz. That no witnesses for me should be admitted. Yea, notwithstanding one of the Commissioners then sitting, Mr. Michael urged that col. Eyre should be sworn, and his Deposition taken, yet the Marlborough and Sarum men together with Mr. Byfield, carried it in the negative, because contrary to their good Order : and the colonel being put back, I had not any hopes that any besides should be so much as looked upon.

Sect. 2. And touching this gentleman, col. Eyre, let me here add something ; That as justice of peace he had proceeded against many of those witnesses which swore most desperately against me, as felonious and scandalous malefactors ; against William Cottle, by sending him to Bridewell for selling ale without licence ; against William Sanders, by sending him to gaol about a robbery ; against William Pinchin, in binding him to the good behaviour, and granting for several warrants against him, for beating his father and mother out of doors. I cannot say that he acted any thing against Nowel, unless it were in taking away his licence : for, although Nowel hath been since prosecuted for the attempt of a rape, in an house, and in the night time, and he upon the out-cry of the party, as I have heard, making away, was yet discovered by the shoe of his hurt foot, which he left behind him, yet, I cannot say that col. Eyre bound him over for it. All which notwithstanding, all these men by col. Eyre thus proceeded against for several infamies, are by Mr. Byfield, the Doctor, and their friends at Marlborough, encouraged to testify against him to his reproach, and yet he not permitted to say any thing in his defence. I shall for the present observe thus much unto these Commissioners and Doctors, from a topic drawn, *a Testibus ad Judices*, That such judges have proceeded but with little credit or justice, that have countenanced infamous persons to be their witnesses : and that where sons of Belial are encouraged to testify, there the judges are usually such as the elders were in Jezreel, or the chief priests and elders were, Matt. xxvi. 59, 60.

Sect. 3. William Cottle, as I have told thee, was now at Livingston likewise, but all that he had to say, was only this, that he would be deposed, That he had never spoken such words to Henry Shewler as are mentioned in his Deposition : But the man and his proffer were both rejected, and it is like enough for this reason : The Commissioners might look upon him already as a perjured person, and therefore might they well think that he would not stick to forswear himself again to excuse it, and as Sanders formerly endeavoured to countenance his perjury with a lie ; so William Cottle minded to countenance his, with another false oath. But this, as I have said, the Commissioners did not admit ; and yet they made use of his testimony against me ; yea, and so

did the judges in the case of Naboth, and the chief priests and elders, although they knew that their testimonies were false, and that they themselves had put those false words into the witnesses' mouths.

Sect. 4. And now when I consider, how William Pinchin, Nicholas Spenser, and Obadiah Cheltenham, would have engaged William Cottle to swear again, I cannot but wonder and tremble, to think how far wicked men for base interests will lead, and how far a wicked man for the hopes of a small reward will follow. This William Cottle (betwixt the time that he swore at Caln, and this time that he now appears at Livingston) was heard to wish, that his tongue had been cut out of his mouth before he had sworn against me ; yet now being backed by his tutors, he is ready with the same tongue to lay a heavier burden upon his soul. Having sworn falsely before he now appears to swear falsely again, that he never said so. But mark the sequel : and here I would have the reader to admire, to wonder, to tremble, but not to judge. Shortly after this time William Cottle falls sick, his wife, as I have heard, hath reported it, that it began with a burning in his lips, proceeding thence to his tongue, in-somuch that he was forced to keep water in his mouth to cool it, while he was at work ; one who was with him as a physician hath told me, that when he came to see him, he found his tongue black, and swollen even out of his mouth. In this sad condition, sending forth such groans which were heard in the street, he continues certain days, and not long after dies. Now (considering that sentence, was past upon me, July 23rd, and that William Cottle was buried Aug. 18th next following, and that he lay sick for several days before he died, and was not buried till some days after he was dead) I say, these things considered, there will remain but a very few days for him to rejoice in my overthrow, or to please himself with the expectation of his reward. It must be confessed, that William Pinchin was somewhat more kind unto him in his sickness, than the chief priests and elders were to Judas in his distress ; for as it is reported, both he and his mother visit him often : but now whether or no it were to encourage him with hopes of recovery, or to comfort him with an assurance of his reward when he was recovered, or whether or no it were to confirm him in what he had said and done, fearing that he should repent and tell the truth, I will not judge.

Sect. 5. Reader, think not that I insult over this carcase, or in any triumph tell thee of his sudden and sad fall, or say that he was thus smitten for this cause. Only let me say thus much, that as we may transgress by being too uncharitable in such cases, so we may transgress by being too stupid. And I wish that all that shall read this story, may from this example have a care to themselves, as with reference to their several actings and relations. If suborners, that they have a care how they prepare and practise with others. If mercenary,

that they have a care how they are practised with: and if Commissioners, that they have a care whom they countenance and give credit to. And I wish that these Commissioners may be the last that credit or countenance such witnesses: That Obadiah Cheltenham, William Pinchin, John Travers, Nicholas Spenser, may be the last that prepare them: That William Cottle may be the last that take such oaths; and that I may be the last that suffer by them. And I further wish that these men, W. P. O. C. J. T. N. S. yea and the Commissioners and Doctors too, may timely and sadly consider of it; That if William Cottle's soul perish for this cause, then they cannot but look upon themselves as guilty of his damnation. If God will require the blood of men at their hands, who seeing others in wicked ways shall neglect to recal them; certainly much more will he require it at their hands who shall put them into wicked ways, and encourage them to go on. If he who withholdeth not from hell, be necessary, then much more he that thrusts thitherward. And here let me observe unto thee the portion which divine providence dispenseth to such practitioners, that do or say or swear basely or falsely for reward or gain.

1. They are often disappointed of, and never receive that which hath been promised them, as Cottle.

2. In case they receive it, yet can they take no delight in the keeping of it; it was so with Judas.

3. That such a thing which they never dreamed of befalls them, which will never be wiped off, Infamy.

4. That that doth usually befall their families, which by these ungodly courses they laboured to prevent. I have told thee already, that John Travers promised William Cottle, 'that if I were ejected, he would see that he 'who succeeded me should pay him, if not, he 'was like to lose it.' but a third thing hath happened, which they never dreamed of: and who shall pay him now? Divine Providence so ordering it that I should be ejected; that William Cottle should live to see it; that he should die before he could receive the reward of his perjury; that that hath befallen his family which by this means he laboured to prevent: and, if his soul miscarry for it, he is gone to such a master for his wages which neither he, nor the Suborners, nor the Commissioner, nor their Doctors did then so much as dream of. I say that that hath befallen his family which by this means he laboured to prevent, poverty. He left behind him many small children, and a wife, who was with the Overseers to engage for her house-rent (notwithstanding her late husband's father were her landlord) before I was thrust from the place. I have been told since, that this William Cottle's widow (belike conceiving herself to be her husband's administratrix, and that all promises made to him to be due to her) hath been with some of the engagers for the portion promised her husband; which it seems was five pounds, besides the

clerk's and register's place; but that she was yet put off, and advised to go to Mr. Stearn for it, which hath made the woman to fly high, and to report it,

"That had it not been for the oaths which her husband took against me (which he took upon the encouragement of W. P. J. T. O. C. N. S.) she believes that her husband had been alive to this hour."

From which it is clear enough that she believes that her husband had sworn falsely; and that he was thus taken off because he had sworn falsely; and that he had sworn falsely upon their instigation.

Sect. 6. Although they had no other witnesses against me but only Cottle and Brewer: yet I must tell thee, that at this time Mr. Long the intruder of Bath, by his letter gave me an alarm in the rear. To the best of my memory his letter was to this purpose:

1. That I had, without his leave, preached at the funeral of Mrs. Jane Rosewel, at St. James's church, in Bath.

2. That at her grave I used these words; 'Forasmuch as it hath pleased Almighty God 'of his great goodness,' &c.

3. That I was not well reported of by the godly.

Sect. 7. And here I shall offer to thy consideration:

1. Something touching the contents of the letter: and

2. Something touching the conditions of the man, which he hath expressed by his several actings.

As to the first branch in his letter;

That I had preached at James's church, in Bath, &c. without his leave.

I answer, That true it is, that I then and there preached, and was thereunto invited by Mr. Richard Masters her son; but I told him, before I promised him to do that last office for his mother, that I would not undertake it, unless he would first undertake that I might preach there without any obstruction or disturbance, of which he assured me, and told me he would make that his business. Upon this promise I repaired to Bath (for the former discourse was at my house at Box, whither Mr. Masters came on Monday before the funeral) on the Friday next after her decease, the day appointed for her interment; and coming with the corpse to the forementioned church, I find Mr. Long at the minister's pew; who then entertained me with this compliment, saying, I was welcome. Yea, and sometime after this solemnity, he comes to some of my friends, and enquires of my welfare, with thanks for my pains, desiring to be recommended to me, as also of my acquaintance. Now how suitable this is to his letter let the reader judge: nor heard I of one word of his distaste until the time that I was articulated against before these Commissioners, which was about 18 months after. Tell me, you Commissioners, how many times had the sun gone down upon his wrath in the mean time? and if they will



needs have him godly for all this, I shall tell them that they seem to deal with Mr. Long as the poets have done by their goddess Juno, whose deity they would assert, and yet they would not deny but that she was of a most lasting malice, and of a most revengeful disposition.

'Distuleratq; graves in idonea tempora pœnas.'

As touching the second branch of his letter: That I used at the grave these words; 'Forasmuch as it hath pleased Almighty God of his great goodness to take unto himself the soul of our sister,' &c.

I answer, That it is like enough that I might use these words, or words equivalent. I ever took her to be a woman who ever lived and died in the fear of God, and therefore in Christian charity was bound to believe that God whom in her life time she had served, would at her death, of his gracious mercy, take her soul unto himself. But now were I to speak at the grave of Mr. Long, (he continuing to the last such as he hath been) it is like enough I may say of him only this, 'That God of his most wise and unsearchable providence had taken him out of the world.'

And then as touching the third branch:

'That I was not well reported of by the Godly.'

I would fain know who those godly men are which he means, and where they live? Doth he mean at Bath? I hereby assure thee, that (be my conversation what it will, yet) any there deserving that denomination, godly, could hardly speak evil of me, because I was then unknown to them; or does he by godly mean William Pinchin, O. C. W. C. J. T. W. S. N. S.? of their virtues and other godly qualifications you have heard somewhat already, and more you shall hear anon: or does he by godly mean himself? This, indeed, is something like the rest; for I assure thee, that (excepting that time wherein he, together with one Bony a barber, his brother-in-law, then living in Bath, came to my house at Box, to search for the Age of their wives in the register there) I remember not that I ever exchanged six words of discourse with him: and therefore, he, (if godly, according to the true notion of the word) could not speak evil of me, because he had so small acquaintance with me. It must not be forgotten that Mr. Byfield presents this letter to them with this recommendation of Mr. Long;

'That it was written, and came from the godly minister of Bath.'

Now to give thee my thoughts, I have a conjecture that Mr. Byfield and he did act by confederacy, *mulus mulum*, that they tossed good words to and fro betwixt them, that they did mutually give and take, and gratify one another with specious compellations: godly me, and I will godly thee: and that therefore they did give such words that they might receive the like. And thus did the Scribes, Pharisees and Lawyers heretofore (they loved to act according to, and follow the best examples)

who seemed to hold their reputation as it were in common, and took a reproach done to one, as a reproach done to all, 'Master in thus saying thou reproachest us also;' Luke xi. 44, 45; but I doubt that as it was with those heretofore in point of holiness and righteousness, so it was with these now in point of godliness; that they understand and practise it much alike.

Sect. 8. But to return to Mr. Long, I have told thee that we were to others mere strangers, and although living near, yet it was in several counties; I never troubled myself about him or his business; and he now to appear against me in his letters? from whence proceeded this? from pity, or prudence, or any principle that is rational or religious? certainly from neither.

1. Not from Prudence. What? a minister (if he be such) against a minister, and at such a time as this? when we had almost all beside against us, for we to be at it amongst ourselves! It may be rationally conjectured that in Noah's Ark the sheep and the wolf, the lion and the goat, the hawk and the dove had no hatred unto, nor fear of each other; the imminent and dreadful danger which they were all in, made them for that time to lay aside their antipathy: and then for Mr. Long at such a time as this, and in such a manner as this, and upon the solicitation of such men as these who brought his letter; to appear against me! and to engage against me in the behalf of such who would cry Aha, so would we have it, at the ruin of us all! and Mr. Long, let me tell you, that I have this conceit with me, that these very men who importuned you thus to appear against me, would to serve their turns, if occasion were offered, be as ready to practise with me to write against you.

Sect. 9. No Prudence then in Mr. Long's actings. No, nor

2. Any Piety neither. There were, indeed, heretofore a sort of people who pretended to godliness, and yet amongst other vile affections were false accusers; these, indeed, might have the form, or outside, or resemblance of godliness, but in their conversations they denied the power thereof; and therefore were they the more notorious, because they intitled religion to it, and converted their malicious actings with so good a name, Godly. I would have Mr. Long observe it, if he understand the original, that the word which we English false accusers, or as it is in the margin, *make-bates*, is *diabolos*, (1 Tim. iii. 11.) the same word being Englished Slanderers, and both these, the false accuser and the slanderer, called by the Devil's name, because they resemble him in their actings. Now to bring down this to Mr. Long;

1. I believe he will not deny it, but that his letter was intended by himself as an accusation against me.

2. And I have already proved it that this accusation, as to him, must needs be false, because he knew me not.

And then 3, he appearing by his letter against me in such a conjuncture of time, place, persons, and after such a manner; I cannot conceive otherwise but that it was with some spiteful malicious design against me. And therefore Mr. Long must give me leave to tell him, that I think I do him no wrong, if I report him for *διδασκαλος*, a slanderer, as the word is rendered 1 Tim. iii. 11, and for *διδωσκων*, a false accuser, as the word is rendered, 2 Tim. iii. 3.

Sect. 10. 'And if Mr. Long will needs be Godly for all this, yet I must tell him that his Godliness is of a much differing kind from the primitive godliness, and the concomitants thereof. Then was Godliness accompanied with righteousness, faith, love, patience, meekness: So far from offering wrong to any, that it was desirous to do them all good; so far from hatred to any, as that it wrought charity towards all; and so far from severity, or rigidity, as that it made men most moderate towards offenders. Hence that of the apostle, 'If any man be overtaken in a fault, ye which are spiritual restore such a one in the spirit of meekness.' Gal. vi. 1. It is observed by many interpreters that the word which is Englished 'restore,' properly signifies to put in joint, any bone of the body which is broken, or out of its place. If then the spiritual man (the ministers of the church) were to set in joint members that were dislocated, then certainly in no wise to break them when they were whole; and if to set and restore them in the spirit of meekness, then certainly in no wise to break them in the spirit of backbiting and slandering. No fruits of Godliness these, Mr. Long. Nay more, to come to him nearer, and upon the score of writing letters. The apostle, although he says he needs them not, yet seems to intimate that it was then a custom for Christians, especially ministers, to grant to others according to their several occasions, their letters of recommendation; thereby to procure to those that travelled good acceptance, and entertainment with those Christians to whom they were to go, being upon their own account, utterly unacquainted with them. But now that a man should upon no grounds write against a minister, and so write against him as one of whom the Godly could not give one good word! certainly if this proceeded from Godliness, then it must be from such a Godliness, which the primitive Christians looked on with detestation; from such a Godliness as was that of the Chief Priests and Elders, Scribes and Pharisees; not from such a Godliness as was that of the apostles and brethren; for such a Godliness which hath its rise from hell, and not from heaven. The Jews, although they hated Paul to the death, and sought for his life often, yet it seems that they wrote no letters against him to their brethren at Rome. Malicious although they were, yet their malice seems to be terminated and limited to the parts near adjacent: but Mr. Long hath been more active, and his influence more diffusive, for—

Sect. 11. I am not the only man whom he hath singled out to shoot at: but he seems to be of the disposition of Ishmael, his hand is against every man; and although I could say much of him in this particular, I shall yet forbear it, because it is in the case of some other men; nor should I have so much as touched at, it unless it had been to give thee some hint of his Depositions: And all that I shall touch at is to tell thee of the pains, travail, earnestness, expence, hazard, and other unworthy courses, which he hath practised against others as well as myself; but he hath not found in Somerset men according to his expectation; No Doctors or Marlborough men there; the Commissioners there being gentlemen discreet and moderate, who as I have heard, have (some of them) given him good counsel, yea and turned him off with several rebukes; and those such as, had they lighted on an ingenuous, modest, or godly spirit, would have been enough to confine him at home with shame and silence. Let others whom it concerns, report his carriage and actings then; what provocations he used to induce some to swear, what pains he took to summon in witnesses, what poor offices he undertook in his own person, what persons he uses in the business, and what names he hath for them to advance the design: I say of these, and such other like these, let others speak whom it concerns; only let me mind thee of one thing which hath been much talked of in Bath, and laughed at; it is this. Mr. Long having produced many witnesses (which it seems in their Depositions did not ear up to his desires) doth further desire that others then absent might be summoned in and heard, giving these absent men this character that they were, beside many other good epithets, godly men, and yet for his protestant, he names a man whom he doth no more take for godly, than he doth me, or I him. And here let me, for the close, observe one thing to Mr. Long, for his godfather Mr. Byfield who gave him that name godly, is since dead, and that is this, that the Chief Priests and Elders, Scribes and Pharisees, had such a gift, that they could change their countenance too, and speak differently of the same persons, accordingly as they were serviceable unto, or obstructive of their private, malicious, and hypocritical design. These people were much applauded, encouraged, countenanced, persuaded, and moved by the Chief Priests, when it was to bring our blessed Saviour to death: but when they went athwart the design, the best words which they had for them then, are 'This people who knoweth not the law, are cursed.' John vii. 49.

Sect. 12. But leave we Mr. Long, and return to the Commissioners, who (having now as many witnesses and papers as they thought would serve their turns, as likewise a supply of such other Commissioners which would do the business) employ Mr. Jonathan Hill to sum up the evidence against me; which he doth, but very briefly: his rhetoric consisting especially in this;

"That he laboured to aggravate my crimes from the crimes themselves, from circumstances, and from the quality of some persons who appeared as witnesses against me; and lessening their contradictions, perjuries, and subornations, by an argument drawn from a consideration had to the Commonwealth or present government, whose witnesses they were, and so whom they acted."

I cannot forget one thing which he insisted on in the first head, and that was touching the person of Nicholas Spenser, intimating that much credit ought to be given to his testimony because he was a grave old gentleman. Touching his gentility and gravity I shall say nothing; only let me acquaint thee with this one thing concerning him: That this Nicholas Spenser professeth a skill in the recovery of such who are distracted; and withal, that he doth sometime practise upon pigs, being alike distempered; now I know not what courses he takes for the recovery of men: but I have been told that for hogs he hath this receipt; That he cuts an apple, or a piece of cheese, and writes upon it Sare, Nare, Fare, and then by inversion Fare, Nare, Sarc, and so gives it the hog; for which, as I have been told, he hath received money, or something equivalent. Now this must be either a charm or a cheat, both which are punishable by our municipal laws: there is Mr. Jonathan Hill's grave old gentleman, I will not be peremptory neither that Mr. Hill said much upon the second head, nor indeed was it so much as was said and done, many a time before by Mr. Byfield and his Commissioners; who countenanced and encouraged many undue, unjust, vea very vile and wicked practices, pretending that it was for the Commonwealth or present government; in the mean time they discountenanced, suppressed many just overtures and proceedings of ours, pretending that it was against the Commonwealth, and present government.

Sect. 13. Now I would fain know of these men what they mean by, or what this same Commonwealth was, whose interest must be promoted by such unworthy courses? Did they mean that present government as it stood then established? This cannot be, because I have charged them with, and proved them guilty of the breach of that ordinance set forth by that power, and according to which they were to act; and it may seem strange that a man should say, that he acts for the Commonwealth, and yet at the same time violate those laws which the same Commonwealth hath made. I think that I do them no wrong if I should say, that by Commonwealth they meant some private interest or aim of their own, which yet must go under that vizard Commonwealth, that they may drive on the design with less suspicion. But I will for once suppose, that they meant as they said, and that their utmost aim was the promotion of the good of the Commonwealth, taking Commonwealth in the best sense: but then I shall add some few things to be considered of. As

VOL. V.

1. That a good end is not to be promoted by evil means; we may not do evil, that good may come of it, in any case. I shall add;

2. As not in any case, so much less are we to do evil for the promotion of the interest of the Commonwealth: of any temporal ordination, dominions and kingdoms are (as of God's especial institution, so) under his especial care: The powers that are, are ordained of God; and as we are therefore to be subject to them, because they are of his institution: (Cæsar is more ours, saith Tertullian, because our God set him up) so we may assure ourselves, that their interests are to be promoted only by such ways and means which the King of kings approves of; which we are assured are none but such as are lawful and just. So that to fancy, that that which is so especially from God, must be supported or advanced by such ways and courses which God hath expressed himself that he doth abhor, is upon the matter, to say, that our great God wants the devil's help to support his own institution: or that his government could not be established unless the prince of darkness did afford some contribution towards it. Mr. Byfield had an Hebrew name, and therefore possibly he might understand the meaning of those words, *Peretz Uzzah*; and hence he might learn that God takes it much amiss from them, because they put forth their hands presumptuously and inconsiderately to uphold the Ark, although shaken: much more could he have taken it amiss, if they had in contempt of his express command put forth wicked hands to uphold it. I remember, that when captain Byshop endeavoured to extenuate, if not to justify Faulconer's perjury, in the case of the lord Craven) by recounting the services which Faulconer had done for the Commonwealth, and adding that Faulconer was one by whom the Commonwealth sat safe, at that hour; The learned Counsel replied on us thus; It is God that we sit safe by, and not by him. Perjuries are not proper means ther to advance or strengthen a Commonwealth. I shall say no more in so clear a case, but only in the words of Job, "Will you speak wickedly for God? and talk deceitfully for him."

And now I shall add,

3. That whosoever shall go about, either in pretence, or otherwise, to advance the interest of a Commonwealth by unlawful or wicked courses, is the greatest enemy unto it. The throne is established by righteousness, therefore destroyed and overthrown by injustice. And the former part of the verse, It is abomination, &c. seems to intimate that not only piety, but even prudence, should engage such who meddled in Commonwealths, to the observance of equity and justice, because wickedness is so destructive to them. Be it then either the supreme that commands unjust things, or inferior Commissioners that put unjust commands into execution, yet of them all, it may be easily proved, that there are none that are such malignants to their government, as are they themselves. Excepting himself and

3 A

his virtuous Jezabel, I know not of any that did contribute more to the ruin of Ahab and his house, than did those obsequious elders and nobles of Jezreel, and their sons of Behal. It is like enough, that the state politic may deride both the priest and his doctrine; and it is like enough that Ahab (before he fell at Ramoth Gilead) would have derided, or done worse to any man who should have said as much to him. But I would have the state politics to tell me, what opinion they think that Ahab hath of it now? who were the greatest enemies to him and his house? who were they that brought his family to a sudden ruin, and a fearful one? could we hear him from the dead, he must needs answer, that he himself and his friends undid him, and that nothing did so much strengthen his enemies against him, as his own and his favorites injustice.

Yea, and possibly (you Marlborough men) some one whom you lately knew, your 'polished shaft' had not been so suddenly taken away, and his posterity, your 'plant of renown,' laid aside so soon, so as scarcely to be spoken of, but in pity or contempt, unless such officious Commissioners as yourselves, had executed his ordinances with far greater injustice than ever he made them. You might and did say, That it was for the Commonwealth, for the present government, and possibly you had thoughts thereby to have established, and perpetuated that establishment both for him, his, and yourselves. And now lo, as to them their honour is in the dust, and as for yourselves, you live the scorn of others as well as those whom you have injured: yea, and possibly in a very short time you may be in a worse condition than those whom you have thrust out of doors.

But to return to the transactions at Lavington at this time: After that Mr. Hill for the Commonwealth, had summed up the evidence against me; and my counsel on my behalf had pleaded to the charge, we were all commanded to withdraw, that the Commissioners might debate the business among themselves. There were at this time many of them, and indeed a greater number than I had seen at any time before, viz. Mr. Thistlethwait, Mr. Michael, Mr. Shute, Mr. Middlecot, Mr. Ludloe of Clarendon, Mr. Hely of Sarum, and the three Marlborough men whom Mr. Byfield had called upon that morning at Marlborough, and brought them along with him. Now those that know that country, can tell that Marlborough lieth not near the direct way from Collingborn to Lavington, and yet Mr. Byfield taketh it in his way thither; to give us to know, That malicious men will not spare for any pains; nor are they ever out of the way, so they may compass their mischievous ends. I was told likewise, that Mr. Byfield on the way from Marlborough to Lavington was like to have had some mischance, he falling from his horse, or his horse falling with him; I believe, that if any such mishap had befallen me, he would have made it a matter of charge: That either the

horse or his rider had drank to excess. These Marlborough men, I say, he brought along with him; and, I doubt not but that he had sent to some in and near Sarum to meet him there: for such now appeared which never sate in my business before, nor did they ever hear Deposition of any witness which was taken by the Clerk, and yet they voted against me: of which more hereafter. And indeed the meeting of most of the Commissioners at this time in this place was design in Mr. Byfield, for he therefore reversed that Order which they had made for my appearance at Sarum, because he doubted (as he was heard to say) 'That I should make such friends there as to come off; which to prevent, he both straitens me in time, changeth the place, and provides himself of such executioners, that (right or wrong) should cut my throat in private.'

Sect. 16. And now when the business came to be debated, had you seen how Mr. Byfield bestirred himself, what weight he laid upon every deposition against me; what rhetoric he used to improve them; what salvoes, and lenitives he finds for the perjuries, subornations, contradictions, and other vile practices of those witnesses which appeared against me; what applications and persuasions he makes to some whom he looked not for there; I say, had you seen or heard this, you might have been apt to think, that Mr. Byfield had taken more pains in framing this declamation, than in composing many a sermon. And yet as zealous, and eager as he was, he could not forbear (no not for that time) his beloved tobacco: that must be remembered, although he makes many a parenthesis in the taking of his pipe. I have yet by me the copy of a speech, which goes by the name of a speech of Sir Walter Raleigh's, spoken by him upon the scaffold a little before his death; Wherein (amongst other passages) he expresseth himself thus: "There is one thing above all that doth most afflict me, and that is a most false and scandalous report that hath much blemished my reputation and honour; how that when that noble and worthy earl of Essex left this world, that I stood in a window drinking tobacco, laughing and making merry at his downfall." Although I compare not myself to the earl of Essex, nor Mr. Byfield to sir Walter Raleigh, yet let me observe thus much upon his words: That if it had been dishonourable and scandalous for him thus to do, being but a spectator; then it would have been much more dishonourable and scandalous for him thus to have done if he had been a Commissioner, or an Informer against him. It is true indeed, my life was not then in question, but yet my livelihood, my reputation; the exercise of my profession (which a man ought to prefer before his life) were; and then for Mr. Byfield (as it is said then a minister) to be erecting out of his mischief in smok against a minister in such a conjuncture of time, was a carriage so misbecoming, and such a scandal, as that I believe, none that they ever turned out were proved guilty of.

Sect. 17. One thing more must I acquaint thee with, which happened while we were at Lavington; upon my coming to town, and bringing colonel Eyre, and some others along with me of good quality as witnesses, (which as I have told thee, were all turned back by virtue of Mr. Byfield's Order,) I was told that one near related to the persons and practices of these Commissioners, should say to this purpose, seeing us come in, That Mr. Bushuall had brought such and such along with him, but that it was to no purpose; for he could not stay at Box, because that place was appointed for another man. And now to see how murder will out, we have now the reason why they countenanced so many infamous perjured suborners against me, and that was this, because I had a considerable living to lose; that they had appointed it for another man; and, (as I shall tell thee by and by,) made their advantages by turning me out, and bringing another in: I remember that Plutarch tells us of one Quintus Aurelius, who in Sylla's time was proscribed and doomed to death, only for this, that he had a fair house at Alba. And let me add little farther; that to thrust out the incumbent right or wrong, was not the only piece of injustice these commissioners and their then corresponding friends at London have practised; for beside the ejectment of the clerk, they had an art to defeat the patron of his presentation. And without doubt this hath made many a man scandalous, that these commissioners had a resolution to dispose of, or to be gainers by the disposal of their livings. Let patrons speak for themselves: as to mine own particular I shall say only this:

1. That by their own confession, my place was appointed for another man. Which

2. I believe was the man who hath since my ejectment held it, Mr. Sterne; who lived formerly in a living sequestered of Mr. Walker's at Chilmark, and it may be was there as a kind of a curate to Mr. Sangar, Dr. Chambers brother-in-law. But at this time was destitute, and therefore right or wrong, a place must be provided for him elsewhere. But yet

3. These men, as godly as they are, love dearly to be fingering money. Mr. Stern hath said, that Mr. Blisset had 20*l.* of him (I believe half the money would have made Mr. Blisset my friend) which in all probability he had an eye to of a long time, and therefore his utmost power must be improved for the thrusting me out; otherwise he had lost his expected gratuity which he was to receive for bringing the other in: 20*l.* sterling; that was a good circumstance indeed, Mr. Blisset.

Sect. 18. But to put an end to the transactions of this day: after a very long debate: (for Mr. Byfield and his Commissioners met with more obstruction in the business than they dreamed of) I was discharged from Lavington, having no more said to me then but only this; that I was to appear before them again at Sarum, at the assize time then shortly to follow; and there to undergo their examination touching my sufficiency.

The Transactions at my Seventh time of appearing before them, at the Three Swans, in Sarum, July 23.

Sect. 1. And having been so many times before them, and waiting so long before I could be heard, I had in the mean time the leisure and the opportunity to see and observe other ministers who were there besides myself: and I made myself curious to enquire who and what they were, and what the business might be which drew them thither. And was answered that some of them were related to some of the Commissioners, as brothers, kinsmen, sons in law; and that their business thither might be either to tender their humble respects to them (Mr. Byfield and the Doctor especially looked to be honoured) or else in order to some augmentation, or change. That others there present I was told wanted livings, and that they repaired thither (as vultures follow armies expecting shortly some execution, that they might be in a readiness to seize, and feed upon the prey. Both these I looked upon as volunteers, and that it was matter of advantage that brought them thither; but now there were others there who appeared as prest-men, and were forced in upon Summons, amongst whom I reckoned myself; and therefore I made myself the more inquisitive touching them, conceiving their condition to be as mine, touching some of which, I was told, that there were heavy Articles in charge against them, and many proofs of those Articles, but that the carriage of somebody was so humble, and a speech which somebody made so winning, that he was discharged until further order: but since I have heard that somebody hath furnished one of the Marlborough Commissioners with a horse, yea and that somebody hath presented him with a parcel of hay since that, so that it may be that the horse or the hay, made the speech, and not the master. These are but circumstances, Mr. Blisset. Against some others I was told; that there were Articles too, but yet that they would come off, because there was money advanced yearly, for the relief of Marlborough. Against others I was told, that there were Articles too, but yet there was but little danger in the business, because the persons so charged had been with Mr. Byfield and bowed before him, or were of the association, or of some classes. Now I hearing this, could not but conclude myself a man whom they had resolved for ruin, because I had practised none of these ways; for notwithstanding one near related unto me was told, that to stand out in my justification was not the way to get off, as also of another way which if I practised, might procure my discharge, or to some such purpose; yet I was resolved that neither horse, money nor hay, should go for me. Being otherwise taught, we must not do evil that good may come of it. If I had deserved ejectment, they ought not to have discharged me for a reward; if I had not deserved it, they ought to have discharged me without it.

Sect. 2. I was told likewise that there were

heavy exceptions taken against me that I came not amongst them, Mr. Chambers, Mr. Byfield, &c. and that I did not make one at their meetings. That I did not associate, but rather that I not only neglected but despised them, or to some such purpose. And doubtless (with the Doctor and Mr. Byfield) this was enough to make a man scandalous in the highest degree. Give me leave therefore to tell thee the reasons why I did not thrust in myself, and make one at their meetings: for although there were no law which either enjoined or forbade them; and therefore such meetings of themselves (being not simply evil) might be matter of indifference; yet unto me there seemed not an indifference *ad utrumlibet*: but that (all things which I proposed unto myself rightly considered) I conceived it better for me to forbear and to stay at home. For

1. I saw no great good which had come of them, or which in likelihood might come of them. And

2. Because they had no commission so to do, and that the times were touchy, hazardous, suspicious, I doubted what interpretation the civil power might have put upon such meetings. And

3. Because the persons who were the leading men among them were as fierce and rigid in their way, as are any (I believe) on this side or beyond Tweed; neither did I know what matters they would propose; or how far the managery of them might be extended. It was since our memories that one lost his head, and others were in pitiful case, for meeting and acting some things against the then present government. And whether or no the working heads of the times might not have strained these meetings to some such construction, I know not. However the pretences might be specious and fair, yet the design of some might be bad enough; and although some might appear there in their simplicity, yet others might have had some further differing, perchance contrary aim. And this we must have been sure for that the project of but one or two, if disrelished, would have been accounted the crime of us all. In short, I had heard so much of the dispositions of some of them, that they could not hold, but that they must needs be meddling in matters which they had nothing to do withal; all concerns both of church and state must come through their fingers, although *directly*, they were wholly for serious, and directories, yet *indirectly* for acts, ordinances, orders, proclamations, in which I will not say they were better versed; but sure I am, of these some of them made more use than they did of their Bibles. I should not have spoken of it, unless a friend of their own Mr. March. Needham had observed it, That the Presbyterian Government (if such as the Kirkmen would have it) is no good friend or servant to the civil; nay, he affirms further, that the settling of the Presbytery in their mode, would erect a power ecclesiastical distinct from that of the civil: for (saith he) it is a maxim among

all Presbyters, and we find it pleaded for at large in the Confession of Faith, set forth by the Assembly of Divines, That there ought to be a jurisdiction in the church, that is in their way of discipline, distinct from the civil. Which tenet of distinction (he adds) must needs be the same in effect with that of the Church of Rome's supremacy; seeing those who plead now for a power without the civil, will not be long ere they arrive to such a height of presumption, as to act above it, or against it in pursuance of their own designs: it will be impossible to keep such a church in discipline within its limits in any Common-wealth, which makes the same persons civil subjects and ecclesiastical superiors. Of the like strain may the reader meet with much more in the same Author, against whom I believe they will take no exceptions, being one that hath deserved so well from them, as that he engaged in their quarrel so far as to cast down their great accuser Mr. John Goodwin.

Sect. 3. And it may be upon this very conceit might the Doctor and Mr. Byfield intrude so much, and act so fiercely as they did in matters of that cognizance, which they had nothing to do withal; for as I have said elsewhere, by their ordinance, the ministers had nothing to do but only to be assistants to the Commissioners in matter of examination touching sufficiency; yea, and as I have heard a lawyer told Mr. Byfield, that by an act of parliament, made about the beginning of the long parliament, clergymen were wholly excluded from having any hand in secular employments. All which notwithstanding none take so much upon them in matter of scandal, as these two; it were no groundless or irrational conjecture to say, that thus they might do upon confidence of the Presbyterian power, in whose Chair they might fancy themselves to be, and that they were they that ought to have dominion; yea and notwithstanding they tell us that they hate Popery to the death; yet they may be pleased with, and practise according to the Jesuits, &c. *In ordine ad spiritualia*, which could they extend according to their desires they would leave but little for the secular power to take cognizance of: Mr. Byfield and the Doctor, they sitting at the stern, and directing the course, and the hackney Marlborough men tugging at the oar, and wafting them to their aims. Those for their repute, honor, sway, these for their advantage and gain: one sort loving to be obeyed and revered, and the other sort loving to be fed. These dangerous consequences I presume the present civil power will have so much providence as to foresee, and will have so much prudence as to prevent.

Sect. 4. But to return to Sarum, being in town, July 22, the day before the examination, I went to visit Mr. Eyre, with whom I had formerly some acquaintance, his house being near to the house where I lodged: with whom I had not been long, but looking through a window into a court which leadeth into his house, I see William Pinclin and Obadiah Cheltenham

making thitherward, whom Mr. Eyre meets at the door, and after some short stay with them he returns into the room again with a letter in his hand, which I conjecture he received from W. P. and O. C. and that it concerned myself; and this letter possibly Mr. Eyre might have shewn me, had not Mr. Byfield, the Doctor, and a third man whom after I understood to be Mr. Strickland, (somewhat you see will bring Mr. Strickland under Mr. Eyre's roof) came shortly after unto his house: whether it were design in them, or accidental to come so soon as the others were gone, I cannot say; which three, when I saw making towards the room, I withdrew into another, from which after some short stay I returned back again to Mr. Eyre, who then told me (these three being gone) that Mr. Byfield had told him; 'That the major part of the Commissioners were satisfied touching the matter of scandal proved against me:' as I remember I said no more to him but this. 'And what make I here then?' But these words of his brought somewhat to my mind, which I had read of Bishop Ridley, who although he were sent to Oxford to dispute, yet his death was resolved on by Gardiner and Bonner, before he went from London, or had ever framed argument. And now Mr. Byfield hath given me a perspective wherewithal a man might look into his godly bosom; for it is now manifest, that this examination was intended to no other end, but that by it I should the more condemn myself; for whatever I had said, it would not have procured my discharge, because I was condemned before; and if I had said any thing to disrelish so learned, so prudent, so pious, so just a Quorum, as were the Doctor, Mr. Byfield, Mr. Hughes, and the Marlborough men, it should have been improved to have made more against me: 'Non intererat occidentium quid dicerent,' was the old rule of law, and since we have been told, that there is no reply to be made after that sentence is past, Mr. Byfield's friends must give me leave to tell them, that I have heretofore read of such as himself, and in this particular; and who should they be (Mr. Byfield loved to make use of rare men for his precedents) but the Sanhedrim at Jerusalem, (Reader, think not that I intend the resemblance to hold, save only in this, That Mr. Byfield and his friends were somewhat like the Chief Priests and Elders) who

1. Sought for and encouraged false witnesses, against that blessed person whom they studied how to destroy; which witnesses falling short of their expectation, they

2. Themselves proceed to examine him, 'Ut ex ipsis ore aliquid elicerent quod ipsum oneret,' that they might entice something out of his own mouth to charge him withal.

Sect. 5. But come we to the examination, which was the next day following, at the Three Swans, where I appeared about two or three o'clock in the afternoon, where I found Mr. Chambers, Mr. Byfield, Mr. Hughes, and the three men of Marlborough, beside many other Commissioners and some ministers.

There were then with me col. Eyre, my counsel Mr. Carter, and another a minister, who were desirous to have heard the examination; but could not be admitted by any means, because there was an Order made,

That none should be in hearing but the Commissioners, and their subordinates.

I have a conjecture, that Mr. Byfield, if not the sole author, yet, was a main promoter of it, because he was so zealous, that it should be observed, and also gave some reasons why it was made: for when some of the Commissioners, (I having expressed myself, that it should have been indifferent to me if the doors were thrown open, and that all that would might come in) urged that others might be admitted, Mr. Byfield insists upon the Order, adding something by way of a seeming reproof for their inconstancy, Nay, if you will not stand to your Order, gentlemen; and then gives the reasons which moved them to make and to keep it, and that was,

That if all were admitted, then would the whole country know what questions they proposed.

And what if they had heard or known them? Were your questions such that you were ashamed that they should be known? Or was it for fear the country should, hearing your questions and my answers, think better of me than you were willing? And have been apt to discharge me whom you were resolved to ruin? But it may be Mr. Byfield's reason that all should be excluded, was not that the country might not know what questions they proposed, but that the country might not take notice that Mr. Byfield proposed no question at all; for I remember not that by way of question he said so much as a word to me. That tongue of his, which at former times ran upon speed, so that nothing could stop it, seems now to be crippled, and to be downright lame. So that, were he living, we have now got a receipt to cramp Mr. Byfield's tongue, and that is to discourse of matters of religion.

Sect. 6. This business of examination held for a long time, nor will I give thee any account of it, because I hear not that they say, that they ejected me for insufficiency. Let them report of it what they please, yet will there be this disadvantage against them, that there is not much likelihood that they should report the truth, which took such a course that the truth should not be known. But for the reader's satisfaction in this particular, I hereby let them know that I shall not refuse any of them in any of the public schools of either of the Universities; where I am sure there will be no orders made to shut the auditors out of doors; nor shall Mr. Chambers cry out against me for this as he doth against Mr. Dell, *Satis profiducia*, as is the man, such is his confidence: For I assure him, that he cannot have a meaner opinion of me and my parts, than I have of myself; but yet mean although they are, yet perchance not so contemptible

in respect of theirs. I remember, Homer, although he account Menelaus to be too weak to encounter the warlike Hector, yet he makes him match enough to combat the effeminate Paris.

Sect. 7. After the business of examination was ended, and I with-drawn, there comes to me into the chamber, where I was sitting with colonel Eyre and my counsel, Mr. Blisset's son the Commissioner's clerk, with advice to me that I should resign, adding that then I might be capable of another place, whether he came from his father with his word in season, I know not. I know not neither, whether he came in any way of courtesy with this advice; possibly he might by this, give me to know, that the same hand which had disposed of my living for another man, might upon the like consideration dispose of another man's living for me. But this his advice of my resignation, and the reasons of it, were rejected, with some contempt both on colonel Eyre's part and mine own; it being no other than ridiculous, that a man should be capable of, and thought fitting for another place, and yet not fit to keep his own; and therefore, as I said, this proposal was either that they might make their advantages all manner of ways by putting another into my place, and settling me elsewhere, or else that they might the more triumph in my ruin, because in thus doing I had contributed more to mine own ruin than they possibly could; having by a resignation made myself utterly incapable of returning to Box, as also of receiving any profit thence which might be allowed to such as were ejected.

Sect. 8. Shortly after this, I was called in again to receive my doom, which was pronounced against me by virtue of that Order which Mr. Byfield, and his Marlboroughmen, had procured against me at Lavington about twelve days before, and had lain dormant by them ever since, as a trusty reserve no doubt, which, if they could not destroy me any other way, should not miss to knock me down. I observed that while my sentence was reading, Mr. Chambers had pulled down his hat somewhat low on his face, but for the residue of his face which might be seen he looked very big, and possibly might say within himself, that now he had taught me to bring a man of his merit upon the stage, to make him the discourse and laughter of the country, for leaving Claverton, and going to Pewsie. Mr. Byfield in the mean time was playing with a tobacco pipe between his fingers, although he forbore to smoke it for that short space, yet had he the pipe in a readiness, and was a filling of it out of Mr. Martin's box before I left the room, and seemed to look merrily at it, which minded me of that

*'Risus adest nisi quem visi movere dolores.'*

No laughter there appears  
Unless for others tears.

Sect. 9. And yet I assure the reader that as to the main, Mr. Byfield was very much disappointed in his expectation; I have heard say,

that his word was, That if he could not bow, he would break them; if he were not dead, I should say it was a fitting motto for an inquisitor; however I must tell his surviving friends, that as to mine own particular he was so far from hitting the mark, as that he hath missed the butt: whosoever shall light on these sheets, and read them, will readily say, Surely he hath not bowed me, there being not a line in the whole relating to himself, that relisheth of begging; and for breaking me, I wish, so it might not be to their torment, these quondam Commissioners had seen how contentedly I lived without my means; how little I grieved for the loss of it; how little I desired the re-enjoyment of it: Yea, let me tell you farther, that, although ignorant and scandalous you account me, I have often read Psal. 37, and there I am taught (and I humbly thank him, God hath given me a heart to learn) not to fret myself because of evil doers; nor because of him who prospereth in his way; because of the man who bringeth wicked devices to pass: although I never envied your power, yet I pitied you for your managery thereof; and, for all your spiteful, vile, unjust proceeding, I desire to have no revengeful thoughts against you; nor had I in the publication of this narrative any aim to asperse you, but to vindicate myself. Yea, and let me tell you farther yet, that, although you had it not in your intentions, yet my ejectment hath been some ways advantageous unto me, and that in securing me from several vexations, and a continuation of fears, doubts, charges, compliances, visits and other inconveniences, which had I continued at Box, I must have been exposed unto, all while you continued in your power, and executed your power with so much injustice. And this whether I look on the Commissioners or mine accusers.

Sect. 10. 1. For mine accusers, the chiefest of these was William Pinchin, of whose perjuries, subornations, and other his vile and base practices, I have spoken somewhat already, and more I shall say, when I give thee a short view of his life; and yet this man must have been humoured by me, and humoured in his baseness; Nay, not only humoured, but fed too; I must not have dared but have furnished him, whensoever he asked; and his poor indigent condition was such, that he would have been always craving; and if I had denied him at first, or questioned him afterward, it is like the fellow would have grown surly, and have stopt my mouth with the Commissioners, or threatened me with Tho. Cox, or his Mr. Chambers, or Mr. Byfield. I remember, that sometime before I was questioned, this William Pinchin came to my house, to borrow some money of me, with which I did not at that time furnish him; whether it were because I then had it not, or whether it were because his mother had formerly borrowed a considerable sum of me, as she said for him, of which I was not then satisfied, no nor (what through their base sharking shifts



and mine own easiness,) am I ever like to be, I now remember not; but as for me, he then went without it; but it seems he was then so nearly driven, that he borrowed what he could get from my servant. I have heard that he was highly displeased, that he went without it. And possibly took this course of perjury and subornation, to be revenged of me for it. Now under this pressure I must always have lain, nor would there have been any way to have kept him from forswearing himself against me, but to have lent him what he had asked for, and never after to have demanded it of him. His mother Joan likewise would have been sneaking after me, whose property is not only to forget courtesies, but to repay them with base usage, in denying what she hath received, or by patching with those to whom she hath been beholden; ever beggarly, and ever base. I must likewise have made much of John Travers, as long as he lived, and Obadiah Cheltenham, they must have been entertained and thanked, yea, and rewarded for frightening me; and my benevolence should have been spent at the next alehouse, they making themselves merry at my charges, and laughing at my fear, which had furnished them to pay their reckoning.

Sect. 11. Then for the Commissioners and their appurtenances. Thomas Cox doubtless would have visited me often; and I must have been as nearly related to Mr. Blisset's son as Mr. Stern was: and although Marlborough were too far to send hay, yet doubtless something would have been expected there, although less visible, yet not less chargeable. I could have expected no more courtesy from them than they vouchsafed to others, and that was only a dismissal until further orders. So that I could have looked upon myself at Box, for no better than their tenant at will, and that their favour towards me, would have been according as I remembered them: whereas I was since freed from all these charges, and continual fears; and if any man in my absence enquired for me, I had no cause to fear that it was Thomas Cox, your agent. Mr. Blisset's son hath had no relation to me; neither might the Marlborough men, or their wives, expect any horse, hay, money, or plate from me. Nay more, should I have chanced to have met your Doctor on the way, I should have given him, not such reverence which he looks for, but, such respect as I thought fitting: and upon some such weighty account, I have been told that he was distasted at me; and so was Hannan the Agagite against Mordcaï. Nay, which is more than all, the very sight of Mr. Byfield did not since affright me; but on him could I look with pity or contempt, whom my terrified brethren durst not think of but with trembling.

Sect. 12. I have but little more to add at this time, and that is touching Mr. Ludloe of Claringdon, and Mr. Hely of Sarum. These I have told thee appeared at Lavington, having never sat in business before: nor ever heard

the Deposition of one witness, which was taken by their clerk; and therefore they could know nothing but by information from Mr. Byfield and his friends of Marlborough, and yet these sentence against me. And it is like enough, that as they were sent for, for this purpose, so were they resolved what to do before they came out of door. Touching Mr. Hely, the wonder will not be so much to them that know him. But now for Mr. Ludloe,\* a gentleman; that he should in a matter of so great concession, be so easy as to be drawn in against me in my livelihood, my reputation, my profession, my hopes, only upon the information of others, of such others; I will say no more, but only thus; that if Mr. Ludloe had been in my condition, a minister under question, and I in his place, a Commissioner to give my vote; if I should have voted against him, upon no better grounds than as yet appear to me, he hath voted against me, I should think that men had done me no wrong, if they had made this report of me. That it was pity, that a man no better qualified, should have so much power; and that in my sentence I had little regard either to piety, prudence, conscience, or justice.

Sect. 13. And now as touching Mr. Hely, I have been told, that a great exception which he had against me, was this; That I was a Common Prayer man. I think he could not have said more in my commendation; like Balaam, instead of cursing, he blesseth me; he condemns me for having done my duty; and sentenceth me to deprivation for using that book, whereas by the law all ministers are liable to deprivation, because they do not use it. So that he dooms me being innocent, to that sentence which the Doctor and the other ministers had deserved.

The Transactions at my Eighth Time of Appearing before them at the Three Swans, in Sarum, March 17, 1657.

Sect. 1. And now it is like mine enemies had prevailed as far against me, as the injustice of corrupt judges, the malice of perjured witnesses, the restless impudence of the sons of Belial could desire. Both Commissioners, Doctors, and witnesses belike triumphing to think how much they had undone me. Notwithstanding it were by candle light that I were sentenced, yet was there an Ordef issued out the same night, I guess that William Pinchun and Obadiah Cheltenham, were not more earnest to desire it, than the Doctors and Marlborough men were to satisfy them, impowering Nich. Spenser and John Harding to the sequestration of the profits of my vicarage. Which suddenly they enter upon, and proceed in it with much diligence and terror. Nich. Spenser especially, traversing over the parish with a honey pot under his coat, doubting, as I have been told he should say, that he should

\* A fierce Decimator in the time of Oliver Protector.

not receive enough for his winter toasts. And clearly my condition was then such, that as they had taken a course that I should not stay at Box, so there was a course taken by others, that I should not know whether to go, or how to employ myself for a subsistence. For I was not in a capacity to receive any fifth, because I was unmarried; and utterly disabled to the performance of any ministerial duties, so much as to teach a private school, because I was ejected. And possibly these considerations might encourage the Commissioners, Doctors, Witnesses to act as they did, because they had now an opportunity to undo me according to their desires. They having deprived me of my present livelihood, and the Protector's declaration of Nov. 4, 1655, debarring me of all hopes of getting my livelihood for the future.

Sect. 2. Which person and declaration since I have mentioned, let me ask his Marlborough Commissioners and Ministers, and was this the thing whereby he merited so highly of them, as that they in their addresses to his son must needs call him 'polished shaft?' I believe that they were beholden to their doctors for their expression, and I believe again that they that doctors took it out of Isai. 49, 2, where the Messiah tells us that the Lord had made him such. And certainly this so properly agreeing unto him, as not without blasphemy to be communicated to any other. These men were, by their patrous instructions, to eject men who were found guilty of blasphemy; and lo, I believe that a more shameful and gross piece of flattery, and blasphemy, hath not been lately heard of than is this of their own. No nor in former ages neither, unless that of Acts 12, 22, come near it. But yet, I would do these men what courtesy I can, I will suppose that by that expression, 'Polished shaft,' they mean no more but this; that although *proprie* or *primariò* none can be justly styled so but the Messiah, yet 'secundum significationem limitatam, et restrictam,' in a limited and qualified sense others may be called so likewise. As kings and judges are called gods, because they receive their commission from God, and so ought to employ themselves as in his business: The same word giving them power to act, and likewise cautions touching their behaviour in that power: and so proportionable might they borrow this epithet 'polished shaft,' and bestow it upon their patriot. But now, this being granted them, they must yet give me leave to ask them, and with what congruity? And how do these words belong unto him? If I mistake not, the Messiah is there so called because he was sent of God to subdue his, and the church's enemies. But now what enemies of God, or of the Gospel, or of the church, did your Protector subdue? Stile you him by this name because of these ordinances? If so, then you speak by contraries; therefore a 'polished shaft,' a vanquisher of the church's enemies, because he first undid, and after stopt the mouths of hundreds of able, and orthodox ministers.

And whereas the apostle saith it would be woe to him if he did not preach the gospel, (which woe is still impendent upon all ministers who shall wofully neglect their duty,) this Protector takes such an order, that it should be woe unto them if they did preach the gospel. And yet a 'polished shaft.' The church of England hath not greater nor more bitter enemies than the Jew and the Papist. The one hating us because Christians, the others because reformed; and yet both these had his favour. The Jew a kind of an invitation, near of the date with this ordinance: The other, entertainment in the Royal Palace, when as hundreds of ministers, I believe truly godly, and I think as learned as ever our church enjoyed since the Reformation, were not only thrust out of their livelihoods, but also cast off from executing the priests office unto the Lord. In this more like to the son of Nebat, than the son of God. And whereas those ejected priests and Levites had the land of Judah to go to, and there find both a livelihood and an employment: This their 'polished shaft,' had so ordered it, (it is Mr. Pryn's observation) that they should have no employment neither at home or abroad. Nay more, (to put them and their families upon a necessity of starving) he not only enacted that they should have nothing to subsist by, but also made it penal after the most ignominious manner, if they went about to beg, which, says the same Mr. Pryn in the same place, was such a transcendent barbarism, impiety, and high way to extirpate religion (as pious, learned archbishop Usher told him when he mediated for their liberty, as he told Mr. Pryn and others with tears, which broke his heart soon after) as the pope and jesuits themselves could not have invented the like; and exceeded all foreign persecutions against protestant ministers in Piemont, Bohemia, and Silesia by popish princes being of a different religion, but he a pretended protestant zealot. This is the Marlborough men's 'polished shaft.'

Sect. 3. And whereas they have none to liken him to, but the holy one of God, the best; I can hardly find one so wicked as to be joined in comparison with him, unless it were Jeroboam the son of Nebat, who out of a politic respect (like unto his) thrust out the Priests and Levites, both from their service, and their livelihoods; and after he had taught them the mode of sacrificing, suited himself with Priests of the lowest of the people, or the Sanhedrim at Jerusalem, who 'commanded the Apostles not to teach at all, or speak in the name of Jesus.' The apostate Julian, although he be looked upon as a bitter enemy of the Church of God, although he persecuted them, although he scoffed at them; yet I read not that he silenced them. One of the worst things which he is reported to have done against them, is, That he forbade them the public schools, and studies of arts and tongues; which decree an historian, principled like himself, stiles, 'inclemens, obrudendum perenni silentio,' merciless, uncivil, and

to be buried in everlasting silence; and yet these Marlborough addressers think not a name (fitting only for the Son of God) too good for their patron, who had made a decree against Christian ministers, far more barbarous than was that of Julian. It is true, indeed, in the close of that Ordinance, he hath a kind of qualifying proviso, and talks of tenderness to be used, but it is under such conditions, that if men should observe them, they must cease to be what they ought, godly indeed. And whereas he talks of tenderness, many a one in this land of ours can witness what his tendernesses have been; and have found the words of the wise man verified in him, 'The tender mercies of the wicked are cruel,' Prov. xii. 10.

Sect. 4. And indeed this Declaration was of such a tender and godly strain, that shortly after my ejection, some sitting as a parliament, although the far greater part chosen by the country were by him excluded, thought it not fit that it should be continued, and therefore by not confirming of it, they null it; and not only so, but also they make further provision, That all ejected ministers whatsoever, married or unmarried, not having 50*l.* per annum, or 500*l.* in personal estate, might be capable of receiving fifts: which fifts the Commissioners by virtue of that act, were required to allow them, which I believe was no good news either to the Marlborough men or their doctors.

Sect. 5 Having such grounds for my claim, I repair to Sarum, about March 17, 1657, for the assize being there held about that time, I had some confidence that I should find the Marlborough men and their Doctors there; nor was I disappointed of my expectation, for there I find them at the Three Swans, sitting in Mr. Byfield's lodging; and being told that my application to them must be by way of petitioning, I employed one, who was a kind of a clerk to them, to draw it up in their usual form, which he did in these words; 'Sheweth, That your petitioner being by your lawful authority displaced from, &c. which word 'lawful,' a friend of mine, being somewhat acquainted with their proceedings, did somewhat stomach at; which dislike being perceived, their clerk (belike knowing that *lawful* was not a word which belonged to his masters, the Commissioners and Doctors) was content to strike out, and so it was, 'being by your authority displaced, &c.' wherein, according to the act I moved, 1. for a fifts. And, 2. That to be allowed from the time of my ejection, which was above a year and half before. And 3, in regard I lived in Bath, which was in another county, and a day's journey from any place where they usually sat, I moved that this might be settled at this their present sitting. In order whereunto I had then some with me, who proffered themselves to be tenants to my vicarage at 100*l.* per annum; for the payment whereof there would have been better security given than 3 or 4 of the Marlborough men should have given out of that estate which is lawfully theirs. Now Mr. Chambers bearing Henry Sheyler

VOL. V.

(for so was his name that made this proffer) promising 100*l.* and having heedfully eyed him all the time, asks (belike fearing that the Commissioners should have forgotten so necessary a question) Whether he were sufficient? it is like he meant, to pay the rent, which he proffered. And here to see how these Doctors, Mr. Byfield, and Mr. Chambers, concurred in questions fundamentals. What is your living worth a year, quoth Mr. Byfield? Is he sufficient to pay the rent, quoth Mr. Chambers? This business did in no wise concern Mr. Chambers, unless he mistook the examination of the sufficiency of the tenant, for an examination of the sufficiency of the minister. But it may be that the old business of this leaving Claverton and going to Pewsee, did yet stick in the Doctor's stomach, and therefore having undone me in the gross before, he now improves his spite, to undo me by retail. Let me here observe something unto thee touching this Doctor, and such as himself. When they are at any time questioned touching their leaving of their first livings, which many of them have done) these livings being of but a small value, and then intruding themselves into other livings, and the livings of others, 'per fas, aut nefas, right or wrong; and those such which are of a greater value than their own livings, which they had repudiated: or when they labour for augmentations, or unions of two or three parishes into one, (these men will abhor Pluralities as odious as bigamy) and all for their own profit: in excuse for their shifting and changing, or consolidating, they will tell you either that the former air did not agree with them; or that by the exchange, they might win more souls, or (with more truth and plainness) that they were then enforced to this change for a comfortable maintenance for themselves and theirs, which their own livings could not supply them with. And yet these very men (the Doctor for one) have no such weights or measures\* for others. And when I say others, I mean ministers, and such (I speak not of myself) who are every whit as deserving as themselves: whom they can be content, not only unjustly to thrust out of all, but also to defraud of that small pittance, a fifts, which the modern laws hath allowed them; measuring unto us by the small Ephah, but weighing to themselves by the great Shetel. The Doctor must give me leave to tell him, that I have read of such who were of this judgment, that right and property to a thing were founded in grace; and that all men were sinners who were not of the Godly. Now we now well to whom this epithet, Godly, hath been by some men appropriated in these latter years, and for what purposes: and therefore might the Doctor be so fierce against me, as me (I being not of their mark) on whom even his alms were cast away.

Sect. 5. Mr. Blisset had his sting at us, at this time when Henry Sheyler offered 100*l.* per annum for the vicarage; saying to this purpose, that Mr. Stern did not make above 90*l.* per annum of it. It seems that Mr. Blisset was 3 B.

well acquainted with Mr. Stern's receipts, and I doubt not but that he and his son William, have been well acquainted with some of Mr. Stern's disbursements likewise. But at this time at Sarum there was nothing done, for notwithstanding I had procured one who professed himself to be a tenant to my means under such a rent, and in regard of the distance I then lived at, and the uncertainty of the time and place of their sitting, I urged for a dispatch at that time; yet as to my business nothing would be done, I being put off only with this answer, that I should come before them at some other time and place, whereof Mr. Stern should have notice, that they might hear what exceptions he had to make to my demands. This was a business which did not please them, and therefore they delay me, on purpose (belike) to tire me out: or in case I would be clamorous, they would so order it that my expences in waiting on them, should amount to as much as the fifths, which they intended to allow me.

The Transactions at my Ninth time of appearing before them at the Angel in Marlborough, April 28, 1658.

SECT. 1. I was told the next morning, that their sitting would be at Marlborough, and that (if I would have any thing with them) I must appear before them there, where, notwithstanding the nomination of that place gave me an assurance of the justice which I should find, I appear according to an order I received from their agent Thomas Cox: They had by this time obtained an addition to the number of both Commissioners, and Ministers, so that now they needed not send, or go to Sarum for it, they having a Quorum of their own nearer hand. Upon this additional account there sat at this time Mr. John Keyps of Marlborough, and another, who then lived in the parish of Bradford, being one who hath varied his name so often, that it is hard for me to say, what is the right; but at that time he wrote his name John Randolph.

SECT. 2. Mr. Stern according to summons appeared there likewise, bringing with him Nicholas Spenser, and William Pinchin so often before-mentioned, all whose businesses was to make what exceptions they could to defraud me of a fifths, and a very gracious ear they had from the Commissioners. Mr. Stern's first exception was, that I had carried away many doors, which legally I could not remove. To which I answered, That I had removed no more than I brought, and that in case I had exceeded he was to seek his remedy elsewhere, this being no obstruction to me for a fifths. Upon this Mr. Keyps begins a very learned lawyer-like discourse of what he had heard in that case; and that was to this purpose, That in case the doors were hanged in jinnals, so as not to be removed without drawing of a nail, that then legally they could not be removed, but if only in hooks, that then they might: in which judgment of his all parties

did acquiesce: and indeed this speech of his minded me of some words which were frequent in the mouth of my predecessor Mr. Coren, (a man too much given to suits of law) who would often say, That he was better read in the Acts of Parliament than he was in the Acts of the Apostles. Another exception which they had against me, was non-obedience to their orders, and this was made by Nicholas Spenser, and to me (who asked what order it was) he answers, it was an order which he had received from the Commissioners but that he had left it at home, but added that he shewed me another order which I would not deliver back again to him; this order I had then about me, and a very wise one it was, for I was required at my peril to deliver up possession by such a time; and yet no person named to whom I should deliver it up; but this, as nothing to the purpose, was waved likewise. Another exception was, that I was worth 500*l*. and this was managed by Mr. Sterp, and William Pinchin, Mr. Stern affirming that he had heard so, and William Pinchin affirming the like: possibly if he had been called upon another time, William Pinchin would have fetched trip, and if need were would have sworn that he had known that I had been worth 500*l*. but these exceptions signified but little, and therefore were soon waved likewise. The next thing we fall upon was the valuation: I have told thee formerly, that I brought one with me to Sarum who professed 100*l*. per annum for it, which proffer they were resolved not to accept of. And therefore they all employ their united forces to beat down the value of. Yea notwithstanding Nicholas Spenser and William Pinchin had not long before valued my vicarage at 86*l*. per annum, at the parish rate, yet are they not now ashamed to say it was too much, John Randolph giving them this hint that it did usually pinch on the parson's side. These men William Pinchin and Nicholas Spenser having the same measures for me as some men say they have for their customers, a greater and a less. If I am to pay a tax, then the vicarage is worth 86*l*. per annum, but if I am to receive fifths, then it is not worth so much. Nor did these Commissioners that I could perceive take any notice of this; unless it were to countenance it, although in thus saying they manifested themselves to be such as honest men should abhor to be, and just men should abhor to countenance: but honesty and justice were virtues neither in use nor credit either with the Commissioners, Doctors, or Witnesses. One thing more touching these men Nicholas Spenser and William Pinchin, it is this: It may be that it was not only to injure me that they thus laboured to beat down the price of my living; they might in this have some aim unto themselves: for so it was that Nicholas Spenser and William Pinchin shortly after this become tenants to Mr. Stern for it, and therefore it is like they did so much undervalue it, that they might rent it at the same rent.

SECT. 3. During this debate touching the

valuation, Mr. Byfield sends for a large paper book, written, which afterwards I understood was his Domestic book, wherein he had the value of all the livings in the county: and turning to Box, he finds it valued at 80*l.* per ann. and so he stints all further debate touching the valuation, because (as he said) that valuation was given in upon oath; soon after which he falls to reading of that Ordinance of Parliament, which allowed a fifth to such ejected ministers who were married, for a maintenance of their wives and children, and then asks me whether I demanded a fifth by virtue of that? to which I replied with some indignation, that he knew that I did not, being unmarried. But I added further, that I demanded a fifth by virtue of an act made 1656. Upon which words of mine he asks me whether I had that act or not? my answer was that I had it, and seeing me about to pull it out and read it, he adds that they had it too; and thereupon amongst an heap of Acts, Ordinances, Orders, Depositions, Charges, in a great tobacco box, pipes, candle and candlesticks, he finds it out, and reads it. Now to see the disposition of this precious scribe, I think we do him no wrong to conjecture that he therefore proposed that question to me, Have you the Act? with a purpose to have defeated me of a fifth if I had not had it by me. His spite towards me continues still; had it been to do me a discourtesy, doubtless that Act had been in a readiness, but now it was purposely suppressed, and had never been produced but upon constraint, to let us know thus much, that voluntarily or with a good will, he would do nothing but mischief; and that when he did any thing which was right, he was even enforced to it.

Sect. 4. And since he is gone, and that this was the last time that ever I saw him, I shall say no more but this of him (had he been living till this time, I should have said much more to him) which I found by mine own experience, that he seemed to be a man of a stirring spirit, and one that proposed no other end unto himself, but himself, nor scrupling any thing which he conceived conducive to that end, his desires (for so much as I could discern in him) being rather that he might be feared than loved. I seldom hear of any courtesy which he did to any, unless it were by accident, and out of a cross humour to others, who would have done some mischief without his consent: so that it may be said that he disliked not the injustice, but this, that any should do it without his approbation. I seldom come into the company but that he is much spoken of, and yet very little which is commendable; and since gone I think scarce missed, or lamented, or wished for by any, unless by such as the men of Marlborough or those who have enjoyed other men's livings, and desire to keep them: and as touching his lay Commissioners of Marlborough, I believe that they loved him as much as he loved them, and that was very little; and yet they kept a fair correspondency, which doubtless was because they could not be without each other, and

so their mutual respects grew not from affection but interest. I cannot charge him with receiving either bribes or gratuities, as hay, horse, plate, money: possibly it was not covetousness which made him to be so mischievous, but an inbred malice in him. If I had known that a present would have prevailed with him, or had I been minded to have practised with him that way, I should have courted him with a headsome quantity of Spanish tobacco, to which he was the most immoderately and scandalously addicted, that ever I saw any man. And yet (considering how many livings he had got into; how many ministers he had displaced, and even starved, and that in his translations he ever had an eye to the barn, glebe, and flock of sheep, more than to the church) it may be conjectured, that he was of like passions with his brethren, of whom every countryman can now observe, that their religious cry hath been only for self-interest, that their removes are for their advantage in revenue, and that their gain is their godliness. All which notwithstanding, I have been told that he died but poor, unless it were in books, of which (and of very choice ones) he left a handsome library; and perchance for this very thing he died the poorer, it being thought that he came by his books as lawfully as he did by his living. To speak in short, I look upon him as a man who was mischievously bent against every body, yea, and that, all things duly considered, he was more mischievous to his friends than his foes; for (and here let me yoke up some of his fellow Commissioners and ministers to him) I believe that many a one of their witnesses in my business had not contracted upon their souls those horrid crimes of perjury and subornation, &c. had it not been for their countenance and encouragement. I believe that were he living, he would confess, that he did me as much mischief as he could; and yet I believe that one of the same tribe did me more, although he were more secret in it. If you desire to know any thing touching his religion, I think you must enquire of Hugh Peters, or Philip Nye, whom it is like (had he lived till this time) as he had been a confederate with them in their traitorous and mischievous actions, he might have born company in their punishments.

Sect. 5. But to return to mine own business, having withdrawn some time, that the Commissioners might consider of it, I was shortly called in again, and told by Mr. Rayly (for he was chairman at that time) that in lieu of a fifth, they had allowed me 12*l.* per annum to be paid half yearly; the first payment to be made on the 30th of September then next following, which was more than two years after I was ejected, and so to be paid by 6*l.* every half year, on 25th of March, and 29th of September until further order. I presumed that they intended not this as any courtesy to me, and therefore expected no thanks, being indeed worse towards me than the more civil sort of thieves, of whom I have heard, that

having robbed men of all, they have yet upon their complaint restored them again a considerable part of it. For this Order, Mr. Blisset's son William would needs have 2*s*. 6*d*. which I told him, was more than I should make of it. And since I have mentioned this Order, let me observe something unto thee, touching the Commissioners who made it: and all shall be to acquaint thee with the fittingness of these men to be employed in matters of the meanest trust; and how little they regard a parliamentary power, unless it be to serve themselves by it. For 1, they were by that act to allow me a fifth, and yet all things considered, they did not allow me a tenth. 2. This they were to allow me, if not from the time of my ejection, yet from the time that the act commenced, which was in Sept. 1656, and yet they allow me nothing till two years after. 3. They were by this act to settle this allowance to me during my life, whereas this was only 'till further order.' And indeed this same until further order, was in much use with them; and I believe that it brought them in many a round sum. If any were discharged, it was only 'until further order;' if any fifths were granted, it was 'until further order;' they ever kept us in a dependance and awe of them: and doubtless men's good behaviour was looked upon, accordingly as they or their wives were remembered: and indeed, as to myself, this same 'until further order,' cost me and my friends (considering how many journeys we made, how great expences we were at) even as much as the fifths came to, for we made one journey to Sarum, and two to Marlborough, before we could receive a penny. I remember that Mr. Bisset, when the Order was read, says (having pulled down his hat, and looking upon the table) that I had put Mr. Stern to a great deal of charge, and seemed to intimate, that therefore they allowed me no more for a fifths. And here to see how this treasurer churgeth me with his crimes: for it was he and his son who had put Mr. Stern to so much charge, and not I. For,

Sect. 6. Beside the 20*l*. which Mr. Blisset had from him, of which I have spoken already, they (as Mr. Stern reported it) demanded another round sum of him for their incident charges, for thrusting me out: and upon this occasion Mr. Stern reported it, when Michaelmas was come, and that small pittance which they allotted me for a fifths became due, I employed some friends to demand it in my name, and to receive it to my use, by virtue of that order; to whom Mr. Stern makes his answer to this purpose, that he excepted not against the order, but that he expected that I should pay a fifth part to all taxes wherewithal he was charged: and being demanded what those charges were, he answers, That the Commissioners demanded 1*l*. of him for their incident charges in thrusting me out, of which he expected that I should pay a fifth part. Now I believe that Mr. Stern would never have spoken those words, unless his dear friends of

Marlborough had hinted some such thing unto him; and that they would have stood by him in it, and have made it good: for notwithstanding, when my brother had told them of it, they seemed to make strange of it, and to be unwilling to own it, yet all this might be, because they were then under another influence; their 'polished shaft,' Oliver, was dead; and his son Richard, their 'plant of renown,' had called a parliament, which was at that time sitting, amongst whom there were many persons of honour; who (as I have been told) had a resolution to question these Commissioners, both touching their power and their actings; which was enough to make the Marlborough men to tremble, and possibly therefore they change their note, because the times were changed.

Sect. 7. I must tell thee likewise, that some of the witnesses who were so hence against me, (reflecting belike on their own merits, and learning of the Commissioners) demanded and received from Mr. Stern, as he hath told me, considerable sums for their incident charges which they had been at in appearing so often against me, to swear me out of my living: conceiving belike, that if the Commissioners were so well paid for their injustice, then might they expect to be paid for their perjuries: and (considering the conditions of some of them) I believe that they did not (as some poor, cheap knights of the post) swear at a low rate, or for a few sixpences or shillings. William Pinchin doubtless knew how to value his oaths as well as he did his bread and cheese; and much according to those soldiers in the gospel, that would not be hired to bear false witness, but for large money.

Sect. 8. And clearly those words of Mr. Stern, that he expected that I should pay a fifths of their incident charges, put me in mind of something which I had read of Phocion of Athens, who being unjustly condemned to death, was afterward informed to lay his poison, and to be at charges for his own execution: these men serving me in the same manner: for (as not content to take away all that I had) they would have made me pay them for undoing of me. And as in this, so in another particular likewise: for (as thinking they had not enough undone, in turning me out of my house, on the reparations whereof, and the mounds, I had laid out near 100*l*.) Mr. Stern prefers a bill against me in the Exchequer, (I guess being encouraged thereunto by these men) for dilapidations, to the value of more than I think he is honestly worth. Now I cannot think that Mr. Stern ever would have preferred such a bill against me, unless it had been upon their encouragement; nor do I believe that they would have encouraged him thereunto, unless they had thought with the wise ones in the Psalm, that they should never be moved; their long success in their wickednesses having possessed them with that delusion, that God did own them or his; and from this consideration, that the divine power made use of them as the instruments to

his displeasure, to correct others by, (which sober men take to be an argument of his displeasure, rather than of his favour) they forthwith sooth themselves up that they were his beloved ones. These men little dreaming that their foundation was laid upon Oliver: and that Oliver's foundation was laid upon the most unparalleled wickedness that this land was ever guilty of: and that a building raised upon wickedness is never without a woe; and that the higher such a building is carried up, the nearer it is to ruin.

SECT. 9 I told thee but a little before, that Mr. Stern preferred a bill in the Exchequer against me for dilapidations: I must tell thee now, that upon my answer he forbears to proceed, as likewise the reason why he let his suit fall. When the bill was dismissed the court, for want of prosecution, I had a subpoena for cost for non-prosecution, which an attorney serving upon him, asks him, what his reason was that (since he had begun his suit) he did not go on with it? To whom Mr. Stern makes his answer to this purpose; that the times were various, every month bringing forth some change, and that this was it which made him give over; for, said he, should it come to that pass, that 'Carolus Dei gratia' should be written instead of 'Custodes Libertatis Angliæ, actum esset,' all his hopes would perish from which words of his it is evident enough, that he himself distrusted his own case, if proceedings should come to be legal; and that all the hopes he had that his suit should succeed, was only from this, that wickedness should still prevail; for that then he might expect to find such barons in the Exchequer, as he had found Commissioners at Marlborough.

SECT. 10. I have not yet done with this 15l. charges incident (and when I have done with that I have done with all) for let me now observe to thee, what a beneficial trade these Marlborough men made of it, let the wind sit which way it would. I think in this particular, out-doing the Jews themselves, for they would so far improve their opportunities, that fall out what could, they would turn it to their advantage: for were it that ministers were summoned, or not summoned before them, ejected or not ejected, yet, be the chance what it could be, it proved always to be a winning cast for them.

I shall say but little of the former, because it never was mine own case, yet there are those whom I know, that can tell you how often Tho. Cox their agent, visited them, and what his business was, what dangers he sets before them, and what advice he gives to prevent or remove those dangers; in brief the business is, *Unadæmque manus*—some quarterly feeling, he must be paid for preventing that storm which was of his own raising. And then for those who had been summoned to appear before them, I have told thee that all the discharge which they had, was only 'until further order,' which must needs keep them in a continual fear, and force them to a continual

charge: nothing was too good, nothing too much for these Marlborough men and their wires. And now as touching such who were in my condition ejected, they had that art, that if they could get nothing by keeping of them in, they would be sure to get by turning them out. And here I can speak upon mine own knowledge, 20l. Mr. Blisset had, I know not for what else, for putting Mr. Stern in, and 15l. they demanded for thrusting me out; it is good being a hangman upon such terms; and questionless this was enough to make me scandalous, because I would not daub, and they were resolved to get by me one way or other. I have read of several persons, who in this particular, have been somewhat like these Commissioners; but the fittest example for them, is that of some sheep stealers that I have heard of, who have been so mischievously thievish, that they would destroy the sheep for no other cause, but that they might have the wool. And now one would think that they had undone me as much as possible, and yet Mr. Stern hath told me that he is a greater loser than myself, that I am 100l. the worse, but that he is 500l. the worse; so that to me he seems to have met with some of such a disposition whereof I have heard a miller to be, who stole five pecks out of a bushel. And if it be as Mr. Stern reported it, Mr. Blisset hath not been wanting to himself in this business: for he hath not only made the Vicarage of Box bring him in plentiful returns to his treasury for the present; but also he hath so providently provided it, that it shall yield him a crop after we are dead and gone; for as Mr. Stern told me, he hath gotten the next presentation to the place; so that now it is not to be wondered, that he ruined me first, and, after he had received his largess from him, cared not how soon Mr. Stern were gone from the place, in order whereunto it was endeavoured, that it should be made weary of it; because his turn was next: and so upon Mr. Stern's avoidance, he might make use and benefit of his presentation. These, Mr. Blisset, are circumstances that supersede all former circumstances whatsoever.

And now by way of conclusion, I had thought to have addressed myself to our renowned patriots now sitting in the High Court of Parliament, and humbly to have begged this piece of justice from them, That they (who call greater oppressors to an account, and force them to, cast up their ill gotten monies, the incomes of their oppressions, bribery, perjury, abominations and the price of blood) would not think it below them to look upon such men as these: in their places indeed much inferior, but to their power altogether as mischievous. Nor should I have any aim or end of mine own in it; neither reparation nor satisfaction for my losses sustained, should I have looked for. Only thus I conceive most equitable, that if I were content to sit down quietly by my losses unjustly sustained, then should they be intreated to surrender up those gains, which they have unjustly got, it would be too great a

temptation to future ages to make them adventure on the like, if they should hear that such who were guilty of such horrid crimes, should yet go clearly off with the profits of their wickedness. But since his Majesty's gracious pardon may extend even to these; I shall not go about either to enumerate their crimes, or to aggravate them. May they enjoy, if it be lawful to wish so, the returns of their injustice. May Mr. Blisset and his Marlborough friends, thrive better by their Commissioner-ship, than they are likely to do by their purchase at Purton. Yet this may we say safely of them, although we can call them to no other account;

that they are such as those of whom the poet speaks:

*Criminibus debent hortos, prætoris, mensas.*

Juv. Sat. 1.

They owe to their own crimes for their estates. And further let me tell them, that notwithstanding the *Querela*, the Question or complaint against them, for those crimes, be taken away; yet that the *Culpa*, the Guilt of them still remains upon their souls. Yea, and further yet let me add, that notwithstanding the *Querela* were remitted unto them without their repentance, or perchance so much as their desire, yet that their *Culpa*, their Guilt will not.

[As the Puritans proceeded in gaining the ascendancy, it is not surprising that they proceeded likewise in retaliating religious prosecutions under which they had severely smarted. (See Dr. Leighton's Case, *ante*, vol. iii. p. 383, the 7th and 11th of the Articles against Laud, *ante*, vol. iv. p. 327, 328. Pryne's Complete History of the Trial of Archbishop Laud, Neal's History of the Puritans, and the preceding writers concerning Church History, as quoted or referred to by him.) Some instances of such Proceedings have already appeared in this Collection. See the Case of Bishop Harsnet, vol. ii. p. 1253; of Dr. Mountague, vol. 2, p. 1257; of Dr. Cosin, vol. iv. p. 21; of Bishop Wren, vol. iv. p. 27; of Goodman, the Jesuit, vol. 4, p. 59; of Archbishop Laud, vol. iv. p. 315. (The Charges against Dr. Manwaring, vol. iii. p. 395,\* were altogether of a political nature.) Among other such Proceedings antecedent to the death of King Charles the First, was the Case of Dr. Pocklington, which being but short, and partaking of the nature of the preceding, is here inserted, though not in exact chronological order.]

### Proceedings against Dr. JOHN POCKLINGTON, for Innovations into the Church of England: 17 CHARLES I. A. D. 1641.

**PETITION** to the Right Honourable, the Lords of the Upper House of Parliament, the humble Petition of I. H. [Harvey one of Pocklington's parishioners] of Cardington in the County of Bedford, Gentleman,

“Humbly sheweth; That John Pocklington

\* Several particulars of the Proceedings against Manwaring, are inserted from the Journals into Mr. Hatsell's Precedents, vol. 4, pp. 124, et seq.: where it appears, that on June 12, 1638, a Message from the Commons was sent to the Lords,

“In consequence of its appearing, That the book complained of, had been ‘printed by the king's command,’ and was to desire the Lords to enquire, by what means this command was obtained; and, when the Lords shall have found the party who gave the warrant, the Commons demand to have him punished with as much severity, or more, than Doctor Manwaring himself.—Upon examining into this matter, on the 12th and 14th of June, it came out that Doctor Laud, Bishop of Bath and Wells, had signified the king's express command to the Bishop of London, that the sermon should be printed.—And this declaration of the king's pleasure, confessed by Bishop Laud, is confirmed by the earl of Montgomery, the duke of Buckingham, and the earls of Suffolk and Dorset, who protested on their honours, ‘That they had since heard

Doctor of Divinity, rector of the parish church of Yelden in the county of Bedford, vicar of Watery in the county of Huntingdon, prebend of Lincoln, Peterborough and Windsor, hath been a chief author and ringleader in all those innovations which have of late flowed into the church of England: for,

‘his majesty affirm as much.’—Notwithstanding this, the Lords, on the 16th of June, address the king, that he will order this book to be burnt, and will give directions for prohibiting the printing of it.—To which address, on the 18th of June, the king returns for answer, ‘That he is well pleased at the Lords' request to suppress the book, and to forbid its being printed again, and has ordered a Proclamation accordingly.’

“It may not be amiss,” Mr. Hatsell observes, “to add, that within a few days after this transaction, Bishop Laud was translated to London; and, in 1635, Doctor Manwaring was made Bishop of St. David's; and this, though one of the articles of the judgment pronounced against him was, ‘That he shall be for ever disabled to have any ecclesiastical dignity, or secular office.’ On the 18th of April, 1640, in the next Parliament that met after this transaction, the Lords took up this business again; and, having read the declaration of the Commons against the now Bishop of St. David's, and the sentence of the Lords,



1. "He hath within these few years, in his church of Yelden turned the Communion-Table altarwise.\*

they refer the whole to their Committee of Privileges, with leave to the Bishop to alledge any thing before the said Committee, on his part, either by pardon, licence, or otherwise. On the 21st of April, they order the records to be brought, that the House may determine this cause. But on the 28th of April, the king sends a message by the Lord Keeper, "That his majesty understanding there was some question concerning Doctor Manwaring, now Bishop of St. David's, had given command that the said Doctor Manwaring shall not come and sit in parliament, nor send any proxy to the parliament." Thereupon, it was ordered to be entered so. *Lords' Journal.* I do not recollect to have seen this last very extraordinary, and illegal, exercise of the king's authority taken notice of in any history. See further, *Commons' Journal*, the 23rd of Feb. 1640."

This note was designed for insertion in Manwaring's Case, but was accidentally omitted there.

\* "The remissness of Abbot and of other bishops by his example, had introduced, or at least connived at a negligence, that gave great scandal to the church, and no doubt offended very many pious men. The people took so little care of the churches, and the parsons as little of the chancels, that, instead of beautifying, or adorning them in any degree, they rarely provided against the falling of many of their churches; and suffered them at least to be kept so indecently, and slovenly, that they would not have endured it in the ordinary offices of their own houses; the rain and the wind to infect them; and the Sacraments themselves to be administered where the people had most mind to receive them. This profane liberty and uncleanness, the arch-bishop resolved to reform with all expedition, requiring the other bishops to concur with him in so pious a work; and the work sure was very grateful to all men of devotion: yet, I know not how, the prosecution of it with too much affectation of expence, it may be, or with too much passion between the ministers and the parishioners, raised an evil spirit towards the church, which the enemies of it took much advantage of, as soon as they had an opportunity to make the worst use of it.

"The removing the Communion Table out of the body of the church, where it had used to stand, and to be applied to all uses, and fixing it to one place in the upper end of the chancel, which frequently made the buying a new table to be necessary; the inclosing it with a rail of joiner's work, and thereby fencing it from the approach of dogs, and all servile uses; the obliging all persons to come up to those rails to receive the Sacrament, how acceptable soever to grave and intelligent persons, who loved order

2. "He bows to or before this altar, very low; as often as either he passeth by it, or makes his approach thereunto.

and decency (for acceptable it was to such) yet introduced first murmurings amongst the people (upon the very charge and expence of it), and if the minister were not a man of discretion and reputation to compose, and reconcile those indispositions (as too frequently he was not, and rather inflamed, and increased the distemper) it begot suits, and appeals at law. The opinion that there was no necessity of doing any thing, and the complaint that there was too much done, brought the power and jurisdiction that imposed the doing of it, to be called in question, contradicted, and opposed. Then the manner, and gesture, and posture, in the celebration of it, brought in new disputes, and administered new subjects of offence, according to the custom of the place, and humour of the people: and those disputes brought in new words and terms (altar, adoration, and genuflexion, and other expressions) for the more perspicuous carrying on those disputations. New books were written for, and against this new practice, with the same earnestness, and contention for victory, as if the life of Christianity had been at stake. Besides, there was not an equal concurrence, in the prosecution of this matter, amongst the bishops themselves; some of them proceeding more remissly in it, and some not only neglecting to direct any thing to be done towards it, but restraining those who had a mind to it, from meddling in it. And this again produced as inconvenient disputes, when the subordinate clergy would take upon them, not only without the direction of their diocesans, but expressly against their injunctions, to make those alterations and reformations themselves, and by their own authority.

"The arch bishop, guided purely by his zeal, and reverence for the place of God's service, and by the canons, and injunctions of the church, with the custom observed in the king's chapel, and in most cathedral churches, without considering the long intermission, and discontinuance, in many other places, prosecuted this affair more passionately than was fit for the season; and had prejudice against those, who out of fear, or foresight, or not understanding the thing, had not the same warmth to promote it. The bishops who had been preferred by his favour, or hoped to be so, were at least as solicitous to bring it to pass in their several dioceses; and some of them with more passion, and less circumspection, than they had his example for, or than he approved; prosecuting those who opposed them, very fiercely, and sometimes unwarrantably, which was kept in remembrance. Whilst other bishops, not so many in number, or so valuable in weight, who had not been beholding to him, nor had hope of being so, were enough contented to give perfunctory orders for the doing it, and to see the execution of those orders not misdeed; and not the less pleased to find, that the preju-

3. "He shews more outward reverence to the altar, than to the name of God: for one time in the church protesting before God, and his holy altar, when he made mention of the altar, he turned himself towards it, and made low obeysance before it, but at the name of God he shewed no such respect.

4. "He hath placed a cross in a cloth behind the altar, called the altar cloth.

5. "He useth much to magnify the cross; and once in his sermon speaking of Moses his prayer against Annalek, he said, that Moses spread forth his arms in the form of a cross, and that that posture of his was more available with God than his prayer.

6. "He hath caused a bell to be hung up in his chancel, called a sacring-bell, which the clerk always rings at the going up to second service, which he performs with variety of postures, sometimes turning his face towards the South, sometimes towards the East, and sometimes towards the West.

7. "He hath caused two cloaths to be made, which he calls corporals, and these he useth to lay over the bread in the Sacrament; and each of these hath five crosses on it, one at each corner, and one in the middle.

"8. That he refused to give the Sacrament on Easter-day, anno 1638, to twelve or four-

dice of that whole transaction reflected solely upon the archbishop.

"The bishop of Lincoln (Williams) who had heretofore been Lord Keeper of the Great Seal of England, and generally unacceptable whilst he held that office, was, since his disgrace at Court, and prosecution from thence, become very popular; and having several faults objected to him, the punishment whereof threatened him every day, he was very willing to change the scene, and to be brought upon the stage for opposing these innovations (as he called them) in religion. It was an unlucky word, and cozened very many honest men into apprehensions very prejudicial to the king, and to the church. He published a discourse and treatise against the matter, and manner of the prosecution of that business; a book so full of good learning, and that learning so close, and solidly applied (though it abounded with too many light expressions) that it gained him reputation enough to be able to do hurt; and shewed that, in his retirement, he had spent his time with his books very profitably. He used all the wit, and all the malice he could, to awaken the people to a jealousy of these agitations, and innovations in the exercise of religion; not without insinuations that it aimed at greater alterations, for which he knew the people would quickly find a name; and he was ambitious to have it believed, that the archbishop was his greatest enemy, for his having constantly opposed his rising to any government in the church, as a man, whose hot and hasty spirit he had long known." Clarendon.

See also the Cases mentioned in the introduction to this Case.

teen of his parishioners, though they had acquainted him before, that they intended to receive on that day, according to their usual custom; and though at the time of the administration of the Sacrament, even from the beginning thereof to the end, they kneeled at the rails, for otherwise he would not administer it to them at any time, yet he still passed them by, and sent them away without it, to their great reproach and discomfort: having no just cause so to do.

"9. He hath also composed and published two books or pamphlets, the one intitled "Sunday no Sabbath," the other "Altare Christianum," wherein he justifies and defends all those innovations in religion that have been unhappily introduced into this church, which also he practises by himself; and besides, in those books he asserts and maintains divers wicked, Popish and Antichristian points, to the great danger and damage of this church and state; justifies sundry popish canonized saints for true saints and Martyrs of God, and censures our own English Martyrs (mentioned in Master Fox's Calender, before his book of Acts and Monuments, set forth by the public authority, and approved by the whole convocation anno 1579,) for traitors, murderers, rebels and heretics.

"May it therefore please this honourable house, to take the premises into your just and pious consideration, and to convent the said Doctor Pocklington before you, to answer the same, that so he may receive such condign and exemplary punishment, as may deter all others from the like dangerous attempts and innovations: and your Petitioner\* shall ever pray, &c."

The first eight of these Articles being evidently proved against him, and also acknowledged by himself; the ninth was thus managed against him, as follows.

A Discovery and Declaration of divers wicked, Popish and Antichristian innovations and doctrines, published and taught, and peremptorily affirmed and defended by JOHN POCKLINGTON, D. D. to the great dishonour of God, the great reproach and scandal of true religion, and to the great hurt and danger of the Church of England: collected word for word out of his own books, viz. "Altare Christianum," and "Sunday no Sabbath;" and humbly presented to the knowledge, consideration, and just sentence of the right honourable the Lords of the higher house of parliament.

#### 1. Touching Churches.

1. He affirms and maintains the dedication and consecration of them by prayers: and that,

\* See Oldmixon's Hist. of England under the Stuarts, vol. 1. p. 163, where it is said that for the rare doctrine of 'Sunday no Sabbath,' he (Harvey) was made the king's chaplain.

as he saith, from the doctrines and decrees of Popes of the first and best times, and confirmed by the doctrine and practice of the holy Catholic church. And he censures the Centurists for bold and impious, because they condemn and brand such kind of Popish consecration of wood and stones, for the mystery of iniquity, *Alt. Chr. c. 10, p. 52.*

Now such consecration is contrary to the statute of *Ed. 6, c. 10,* and *1 Eliz. c. 2,* and *8 Eliz. c. 1,* which abolisheth and inhibits all other rights and ceremonies and forms of consecration (with all Popish ceremonies and pontificals, wherein the manner of consecrating churches, chapels, and church-yards is prescribed) but, such as are only prescribed in the books of Common Prayer and ordination, wherein there is not one word touching any such consecration of churches, chapels, and altars, as this man would have.

2. He teaches and affirms, that the distinction of places in the church is very ancient, and observed even from the Apostles times; and that several places in the church were appointed for the Clergy, and for the Laity, *Alt. Chr. c. 8, p. 43, 44.* And these several places had several degrees of holiness. Auditorium was the place for the laity, and that was less holy; but Presbyterium was the place for the clergy, and this was more holy. And in the holy place, namely the Chancel or Presbytery, there was a throne or chair placed.

3. But he bethinks himself, and saith, that this chair was not in all churches, but only in the churches of bishops; and that such a chair was in the church of Jerusalem and Rome: and then after affirms that the succession of bishops in such a chair, was one thing that kept Saint Augustine from departing out of the bosom of the Catholic church; for he brings him in, saying thus, 'The succession of priests from Saint Peter keeps me of right in the church: the name of this Catholic see, that is, of Rome, keeps me in,' *Alt. Chr. p. 47.*

And again, Sunday no Sabbath, *p. 2,* he saith, that the succession of bishops from the seat of Peter is that which keeps us in the church's lap.

Moreover, he saith touching this succession in the chair, that the very note whereby heretics were known from catholics, was, that the catholics could shew their churches and the very chairs in them; wherein there was not only a moral succession in purity of faith and manners, but a local succession of bishops continued, *Alt. Chr. p. 47.*

Again, he saith, that they that say there were no material churches till 200 years after Christ, are more injurious to the church than they are aware; for if in all this time there were no material churches, then there could be no material chair, then no real enthronization, then no personal succession from the apostles, whereby the right faith was derived from God the Father to his Son, and from the Son to his apostles, and from the apostles to succeeding bishops, *Alt.*

*Chr. p. 49.* And a little after he saith, they that deprive us of the benefit of this apostolical tradition, pluck one staff out of our hands, whereby we stay ourselves from falling from the true catholic church, and beat all heretics out of our communion.

Miserable were we, if he that sitteth now archbishop of Canterbury could not derive his succession from St. Augustine, St. Augustine from St. Gregory, St. Gregory from St. Peter.\*

\* The uninterrupted succession by imposition of hands of the Clergy of the Church of England from the Apostles (which is by some supposed to give particular efficacy to their ordination, and, indeed, to be essential to the validity of Orders) has been much litigated. See the Church Histories and "Bratt's Divine Right of Episcopacy," &c. Lond. 1728. "Williams's Succession of Protestant Bishops asserted, &c." also his "Translation of Le Courayer's Defence of the Validity of the English Ordinations, and of the Succession of the Bishops in the Church of England," 2d ed. Lond. 1728, and his translation of "Le Courayer's Defence of his former Treatise," published in the same year: together with the other books mentioned in these works. Le Courayer for his part in this controversy was persecuted in France, and took refuge in England, where the University of Oxford conferred on him, by Diploma, the degree of Doctor in Divinity. In Ward's Errata of the Protestant Bible, printed in 1688, and lately republished in Ireland, it is asserted that Bishops, Priests and Deacons, being Protestants, are without consecration, ordination, mission, succession, and pastoral jurisdiction; and that all those and their flocks are guilty of sacrilege. See also "Certain Accusations brought recently by Irish Papists against British and Irish Protestants of every denomination, examined by Thomas Kipling, D. D. Dean of Peterborough," London, 1809. In the Church of Rome, Orders are one of the Seven Sacraments. At the time of the Reformation, their sacramental character was much disputed. In the "Institution of a Christian Man" Orders, Matrimony, Confirmation and Extreme Unction are recognised as Sacraments, but declared to be of inferior consideration to the other three, viz. Baptism, the Eucharist, and Penance. It was at length determined that none but Baptism and the Lord's Supper are Sacraments. See the twenty-fifth of the Thirty-nine Articles of Religion. In the Church's Catechism, however, it does not seem to be absolutely affirmed that these two are the only Sacraments, but rather that no others are generally necessary to salvation. The sacramental character of Orders was discussed in both houses of parliament during the debates upon the bill for removing doubts respecting the eligibility of persons in Holy Orders to sit in the House of Commons, (st. 41 G. 3, (U. K.) c. 63,) and upon a motion for the issue of a new writ for the Borough of Old Sarum, made in the House of Commons, May 4th, 1801, see Cobb. Parl. Hist. See also upon the sacramental

What a comfort is this to his Grace, and to all those that receive consecration from him, and to all those that they shall ordain, when they remember that his Grace can say, 'Ego sum hæres apostolorum,' &c. here I and my predecessors have kept possession, here are my evidences that I have to show, that I have received the right faith from the true owner. All this he saith, Alt. Chr. c. 9. p. 50.\*

So that he makes succession to evidence faith, and not the true faith to evidence succession, which is downright Popish.

And in his 'Sunday on Sabbath,' p. 48, he speaks to the same purpose in these words:—In this sort Augustine confounds the Donatists and Sectaries of his time, saying, 'Numerate Sacerdotes,' &c. reckon up your Priests, who succeeded one another after St. Peter in his chair; if you will be esteemed members of the Church. Hereby we may by God's mercy make good the truth of our Church; for we are able lineally to set down the succession of our Bishops, from St. Peter to St. Gregory, and from him to our first Archbishop St. Augustin, and so downward to his Grace that now sits in his Chair, Primate of all England and Metropolitan.

So that he makes the succession of Bishops from St. Peter and the See of Rome, to be a sure and infallible sign of the true Church, and herein shows himself to be a perfect Papist.

All this he speaks by occasion of the Bishop's chair, which he saith is placed in the Chancel, which is a degree holier than the body of the Church.

4. But yet he affirms a holier place than both these, and that he calls 'Sacramum,' or 'sanctum sanctorum,' the holy of holies, and this he thus describes; it is a place at the upper end of the Chancel, inclosed and railed in from the rest of the Chancel, whereto none may enter but the Priests themselves, and none else, no not the King, without a dispensation. This he clears, as he saith, out of the history of Theodosius the Emperor, who when the time of offering gifts was come, rose up, and with tears went into the holy place, and after his oblation stood within the rails: but St. Ambrose, saith he, put him in mind of the difference of places, and told him that that part of the Sacramum or Chancel within the rails, was only for Priests, and no other might enter in there, or so much as touch them. And so he, fair and mannerly, bad the

nature of Orders and the indefinable character of the Priesthood, (which seems to be derived from it) Campbell's Lectures upon Ecclesiastical History.

The objection to the English Orders derived from the story of the *Nag's Head* ordination (as it is called, perhaps consecration or episcopation would be a more exact name) seems to be extremely refined and subtle; since it does not appear to be questioned that Parker and his brethren had been apostolically ordained Deacons and Priests.

\* See vol. 4, p. 545, Laud's Case.

King go forth, and stand with the rest of the common people, which accordingly he did. Alt. Chr. p. 81.

## 2. Touching Altars.

1. He affirms, that we ought to have in the Church a real, material, proper Altar, Alt. Chr. p. 13. And again he saith, we have an earthly Altar here on earth, on which tithes, and offerings, and such earthly things were at first dedicated and consecrated, to maintain the earthly bodies of Priests, whose bodies serve at God's Altar. Alt. Chr. p. 9.

2. For the manner how Altars came into the Christian Church, he saith that no man of judgment or learning, though he looked over antiquity, as the devil looked over Lincoln, will say, and justly, that Altars crept into the Church; but the governors of Christ's Church, and the true and only successors of the Apostles (sure he means the Pope of Rome) brought them in by the special direction of God's holy spirit, Alt. Chr. c. 21, p. 141.

To affirm that God's spirit directed the bringing in of material and proper altars into the Christian Church, is to slander the Holy Ghost, seeing the spirit of God never taught any man in any age, any other thing but that which Christ taught in the days of his flesh; as appears Job. 14. 26. Now Christ never taught any thing of earthly and material altars in the Christian Church; and therefore that spirit that teacheth any such thing is not the spirit of Christ, but of Antichrist.

3. For the necessity of Altars, he would make that appear in this regard, because without them, he saith, there can be no consecration; the Eucharist, saith he, cannot elsewhere be consecrated but on an Altar, Alt. Chr. p. 27.

This he affirms stoutly in his Sunday on Sabbath, p. 48, and in his Alt. Chr. c. 12, p. 75. 76. that where there is no Altar there can be no consecration. And he saith touching the Primitive Church, that if they had no Altar, then they had no Eucharist to deliver; or if they delivered it, they gave it before it was consecrated; for they had no Church nor Altar to consecrate the same upon, and 'Eucharistia in Altari consecratur,' we are sure out of all antiquity, that the Eucharist must be consecrated on an Altar.

From which desperate assertion, it must needs follow, that Christ did not deliver the Eucharist to the Apostles, nor they to the faithful, or else that it was not consecrated, as he saith, when he delivered it, seeing it is most evident by Scripture that Christ and his Apostles had no altars, but tables, and did institute and administer the Sacrament on a table in an upper chamber, and not at an altar in a church. And again according to this doctrine the Church of England for this fourscore years hath had no Sacraments, for it hath had no altars, and without altars, saith he, no Sacraments.

Again, he speaks farther, St. Cyprian tells you, saith he, that the use of altars is to ease

tify the Eucharist upon, and that without an altar it cannot be consecrated, and therefore Heretics have no Sacraments among them, because they have no altars, Alt. Chr. c. 24, p. 17.

Here he affirms that the altar doth sanctify the Sacrament, which is no less than blasphemy for as by Christ's own words it is plain, that which sanctifies the offering, is greater than the offering which is sanctified, and so he makes a wooden or stony altar greater than Christ, which is, as he saith, the sacrifice offered.

Again, he saith, Heretics have no altars, whereby he intimates that the Church of England is heretical, because it hath no altars.

4. For the place of the altar, he saith, it is Sacrament or the Holy of Holies, and that the altar is not to stand in the body of the church, among the people, but, saith he, let it stand as the governors of our church appoint it, at the upper end of the quire, or in the highest or most eminent place of the chancel, where reason and piety ever placed it, in the Eastern Church, the practice whereof Englishmen and Britons ought to follow, to express thereby their consent and agreement with the Primitive Church, where St Peter's chair was set, except some diptiches can be produced for the derivation of our faith and religion, more ancient and authentic than from St Lutherus and St Gregory.

So that this man derives our faith and religion not from Christ the Son of God, but from two Popes, Lutherus and Gregory, and thus Christian faith and religion, he makes to consist in the placing the Communion-table altar-wise, at the upper end of the chancel.

5. For the matter of altars, he saith, these altars are some of them of stone, 'quia Christus est lapis angularis,' because Christ is a corner stone and some of them of wood, the better to express his death on the tree. Sund no Sab. p. 43.

6. For the ornaments of them, he saith; they are to have their carpets, corporals, veils and rails, Alt. Chr. p. 15.

And touching corporals, he saith thus, Pope Pius maketh mention of altars and of a linen cloth or corporal spread upon altars whereunto the practice of the church agrees (sure he means here, as in other places, the church of Rome; for it is not the practice of the church of England) for 'Corpus Domini non in sericis sed in syndone munda consecratur' and to strengthen this, he adds the constitution of Pope Sylvester, who ordained (saith he) that the sacrifice of the altar should not be consecrated in silk or dyed cloth, but only in linen, as his dead body was buried in clean linen. And thus he makes way to Christ's corporal presence in the Sacrament. Alt. Chr. p. 7.

7. For the praise of altars, he saith, that they are the seats and chairs of state, where the Lord vouchsafeth to place himself among us, for what is the altar but the seat of the body and blood of Christ? And these have been in all ages greatly honoured and regarded of the

most wise, most learned, and most blessed Saints of God Alt. Chr. c. 22, p. 113, and 159.

8. For the reverence and worship of altars, he saith, that when the church was consecrated, the altar was the chiefest place, which with most ceremony and devotion was hallowed, and so tithes of the greatest sanctity were given to the altar, Alt. Chr. c. 21, p. 141, 142. And that the priests themselves durst not ascend thither, without doing lowly reverence three severall times, yea, some, he saith, did willingly fall down and kiss the holy altar. All which he propounds to our imitation; and when all this is done, he saith, altars are no otherwise used in our church than the most holy fathers that ever lived, used them, Alt. Chr. c. 21, p. 144.

And again, c. 22, p. 152, he saith, if the types of these altars were had in singular honour among the Jews, then the substance ought to be had in much more honour among Christians.

The Jews never bowed to or before their altars, though erected and consecrated by God's own institution, much less then should we do it, to or before altars set up and hallowed by men, contrary to Christ's institution.

So that he makes these material altars of wood and stone, superstitiously set up in the church, to be the substance which the Jewish altars did typify, to the great reproach of Christ and Christian religion.

Again, "Sunday no Sabbath," p. 50, he saith, if we do only bend or bow our body to his blessed board or holy altar (here he clearly declares, that the worship he gives, is to the altar itself, which is plain idolatry) but fall flat on our faces before his foot-stool, so soon as ever we approach in sight thereof, what Patriarch, Apostle, blessed Martyr, holy or learned Father would condemn us for it? Or rather would not be delighted to see their Lord so honoured, &c. and concludes it thus, blessed are the servants who bow the Lord when he comes shall find so doing, that is, bowing to the altar.

9. Lastly, he gives God thanks for an altar set up at Grantham, p. 121, affirms that there is no doubt but they put their salvation in great hazard, that undermine altars, p. 150, and for his own part, he saith, he would be glad at his heart to be sacrificed for altars, p. 34, and exhorts, that for as much as God had put into the hearts of the Governors of our Church, to restore the Lord's table to its ancient and true place it, had in the Primitive Church, and also to the honour and reverence which of right belongs unto it, in regard of the presence of our Saviour, whose chair of state is upon earth, and to inclose it with rails, not only to keep it from all manner of profanation, but to strike the minds of all beholders with some reverence and respect, to keep their true distance, and to make a difference between place and place, that therefore no sacrilegious and factious

\* That is, our Popish and superstitious Prelates.

† See how this wicked man hath bent his bow against the face of the Parliament.

persons should disturb so holy and godly a purpose, c. 24, p. 175.

### 3. *Touching the Service of the Church.*

1. He teaches a first and second service, and saith that the first service is to be read in Auditorio or body of the church, and the second service ought to be read only in Sacraio, or in the chancel at the holy altar, if the practice of holy Church be enquired after, Alt. Chr. p. 86.

Whereas the Epistle and Gospel which is part of his second service, in Durand's time was read in the pulpit, and reading few, and by Edward the Sixth's Injunction, at the beginning of reformation, was to be read in the pulpit,

2. He saith, that this second service consisteth in consecrations, oblation and orisons, made unto God the Father only by priests, p. 103.

3. For the postures of his second service, he saith thus; when supplication, intercession, consecration and giving of thanks unto God the Father were finished by the priest, with his face unto the East; and the next office he performed, being to bless the people, who always kneeled below him, and were divided from him, and did not stand about or above him and the holy altar itself. Is it not fit he turn him, after reverence done to the holy altar, and with his face unto the West, bless the congregation of the Lord, and do it upon this ground, 'Aperui os in medio Ecclesie,' I have opened my mouth in the midst of the church, Alt. Chr. c. 17, p. 118.

All the prayers in the canon of the mass itself are 'pro circumstantibus,' for those who stood round about the altar, and priest when he consecrated.

Here he expounds the Scripture, not according to the mind of God, but according to his own carnal mind.

4. For the time when second service is to begin, he saith, that St. Ambrose began not the second service as our church calls it, at the altar, before the first service in the body of the church was finished, which still is the custom in our church, and none will ever go about to put that sweet harmony which we keep with the Primitive Church out of tune but schismatics and sectaries. Sund. no Sub. p. 29.

### 4. *Touching Confession, Penance and Absolution.*

1. He affirmeth and maintains Popish Confession, for he thus describes it, to be an act wherein, we confess our fault to God, not as if he were ignorant thereof; but so far forth as by this confession, the mind is set in readiness for satisfaction; our repentance springs out of it, and by our penance God is appeased, Alt. Chr. p. 51.

So he makes God to be appeased not by the death of Christ but by a man's own penance.

2. He teaches Popish Penance; for he saith it is a discipline used for the humbling and casting down of men, imposing on them such a manner of conversation, as may move

pity and commiseration; it giveth law to food and raiment, orders men to lie in sackcloth and ashes; to humble ourselves before the priests, and to fall down upon our knees before God's altars. Penance works all this. And after in the same tenth chapter, "To this purpose" saith he "a solemn day was set apart for taking of public penance for open faults, by imposition of hands and sprinkling of ashes, viz. Ash-Wednesday: this" saith he "is the godly discipline whereof our church speaks in the Communion, of putting notorious sinners to open penance in the beginning of Lent, and wish that it might be restored again, p. 58.

3. For Popish absolution, he saith, that as Ash-Wednesday was appointed for putting notorious sinners to open penance; so Maundy-Thursaday was set apart for their absolution: and this absolution they took on their knees, by imposition of the priests hands. And this he commends, though he saith, he knows it is not pleasing, and they that read it will say, that therein they have endured long penance, p. 58.

### 5. *Touching the Sacraments.*

1. In Alt. Chr. c. 25, p. 181. he speaks thus:—Come we to the Sacraments, and of two which remain as generally necessary to salvation, we shall not have one at all left us, if they and the rites and the ceremonies about them must not be maintained by the authority, practice and tradition of holy church.

So that he grounds the sacraments not on the Scripture, but on the tradition of holy church, which is plain popery.

2. Touching baptism, he saith, that baptism is not rightly performed, 'nisi signum crucis adhibeatur,' unless the sign of the cross be used.

Though it be evident that the Apostles or Christ never used it, and therefore by his doctrine did never in holy baptise.

3. Touching the Supper of the Lord, he saith, that the Protestant hath the abuses and novelties only which are crept into the Roman church in detestation, not the things themselves, nor not the name of the very Mass itself, Alt. Chr. c. 20, p. 138.

Whereas the very name of the Mass is obliterated and expunged out of the book of Common Prayer, the Articles of Religion and the book of Homilies, and is in truth a mere barbarous word.

Again, he saith, c. 16, p. 108, that the people were not so profane and unchristian, to press rudely into the Lord's house, and not to perform their humble and most lowly reverence towards the holy and most sacred altar, where Christ is most truly and really present in the blessed sacrament.

And that we may know that by real presence he means corporal presence, he saith, as he tells us out of Irenæus, that when Christ took the bread and the wine, he gave thanks, and said, that the bread was his body, and con-

fessed the wine to be his blood, and taught a new oblation of the New Testament which the church receiving from the apostles, doth offer unto God in all the world, c. 18 p. 122.

Again, he saith, the priest offers a true and full sacrifice to God the Father, and that when the priest doth use the bread, and pour wine into the chalice, and doth not consecrate water only without wine, he doth offer a pure sacrifice, as Christ himself did, p. 123.

This is just the sacrifice and popish doctrine of the Mass, and indeed pure nonsense; for Christ in the sacrament doth give himself to us, we do not offer him to God: he bids us take and eat the bread, and take and drink of the cup; he doth not bid us offer the bread and the wine.

And yet further, he saith, this sacrifice, the priest standing at the altar, offers unto God for all the world, for bishops, for the church, &c. according to our collect on Good-Friday, and prayer for the whole estate of Christ's church militant here on earth, p. 124.

Whereby it appears that he would fain screw our church into this popish doctrine and practice.

Also that he may make good his Mass, he calls the sacrament the sacred Host, p. 124. and the sacrifice of the altar, p. 127, and p. 128, he saith, Thus you see altars, oblations and sacrifices were in common use among the most holy saints of God that ever lived.

#### 6. *Touching prayer for the Dead.*

He saith, that because Geminus did appoint a clergyman his executor, whereby he was withdrawn from the altar and sacrifice, therefore it was ordered, that they should not sacrifice for him, nor celebrate a sacrifice for his death.

But on the other side, he saith, that the same holy martyr is careful to have the names of such confessors, who died in prisons to be brought to him, and the particular days of their departures, that sacrifices and oblations might be celebrated for them, c. 18, p. 123. And a little after in the same chapter, he saith, when the sacrifice of our Mediator is offered, it cannot be denied but the souls of the faithful are hereby eased, p. 126, plainly teaching a purgatory.

#### 7. *Touching the Cross and Pictures.*

1. For the cross, he saith, that the cross ever used to stand on the altar, and that Rhemenus saith, that in those times Christians had no other images in their churches, but only the cross of Christ, which stood on the altar; and accordingly he hath placed a cross in the midst of his altar, in the church of Yelden.

2. Touching pictures, he saith, that pictures in a chapel cannot but strike the beholders with thoughts of piety and devotion, at the entering into so holy a place, c. 13, p. 87. Whereas St. Paul saith, Christ is not to be known after the flesh, according to which these pictures only represent him, if so be that they were true pictures of him.

#### 8. *Touching Obedience.*

He maintains popish and blind obedience: for he would have the decrees, constitutions and canons of holy church, absolutely obeyed before scanned and disputed upon, cap. 25, p. 187, and p. 190, he saith, that what canons and laws the lords archbishops and bishops, and the whole convocation house frame and devise, and the king's majesty gives assent unto, under his broad seal, ought not to be banded up and down by vicars, parsons, and parishioners, and questioned at their pleasures, but saith, he believes, that they ought to be allowed and believed, and that before they be maintained *rationibus cogentibus*.

Therefore the last canons and new oath and benevolence, ought to be obeyed, and neither disputed nor debated, much less renounced and censured, if this be good doctrine.

#### 9. *Touching Preaching.*

1. He teacheth, that reading is preaching; for (saith he) reading of lessons, and of Epistle and Gospel, is preaching; and the reader is a preacher. Sunday no Sabbath, p. 34. And a little after, Reading then is preaching, nay, heavenly preaching, and there is nothing more profitable for the church and more powerful to make the most perfect men of God, even to make martyrs, p. 31.

He saith, that when Paul preached at Troas, mentioned Acts xx. and continued his speech till midnight, he did but read a homily; and he saith, it is hard for him to say, whether St. Paul made it himself and pronounced it, or whether some other made it, and he only read it. But yet after, he absolutely concludes, that St. Paul's preaching there till midnight, was only the reading the Apostle's decrees, and saith thus: Wherefore I take it for a clear truth, that St. Paul read the decrees, and sure I say that when he read them, and did no more but read them, without adding or diminishing, that he preached by way of homily. Reading of homilies then is preaching, and so is adjudged by the learned bishops in the Council of Rhemes, (which was a Popish Council) Sunday no Sabbath, p. 32, 33.

2. Touching lectures, he saith, that the plot of setting up lectures in every good town, was but a dull device of a foggy brain and willing blunderer, that light upon it in a mist, wherein the brethren were at first involved, Alt. Chr. c. 24, p. 132.

Though Origen and others in the primitive church were lecturers, and lectures in divinity were commonly used, within 300 years after Christ, both in Antioch and other Christian churches.

3. Touching afternoon sermons, he saith, that our Saviour came not to break the law, but to fulfil it, and he being at Capernaum on a sabbath day, preached but once, for he went immediately from the synagogue to Simon's house to dinner, and went no more to the synagogue to preach in the afternoon. The law that enjoined afternoon sermons for the keeping the

sabbath, was not then known to the Pharisees themselves, who else were apt enough to have laid it in his dish at supper: no, nor to these men's progenitors, for 1565 years after, Sunday no Sabbath, p. 31.

Though bishop Hooper, bishop Latimer, Adam Dampier, and sundry others of our martyrs preached twice every Sunday; and St. Chrysostom, Ambrose, Augustine, and others of the Fathers preached twice every day.

## 2. Touching the Sabbath,

He most wickedly and vilely reproaches the Sabbath. He saith the Sabbath is old leaven to be cast out of the church, and that it hath soured the affections of too many towards the church, and disturbed the peace, and hindered the pious devotion thereof, c. 22, p. 155.

Again, he saith, It was anabaptized after the mind of some Jew, lured to be godfather thereof, and to call it the Sabbath. Sunday no Sabbath, p. 6.

Though the Lord's day be called a Sabbath by sundry Fathers, Councils and ancient writers, both Protestant and Popish, by the homilies of our church, acts of parliament, proclamations of the king, and by the very canons themselves.

And a little after he saith, for this name Sabbath is not a bare name, like a spot in their foreheads, to know Laban's sheep from Jacob's, but indeed it is a mystery of iniquity intended against the church; for allow them but their Sabbath, and you must allow them the service that belongs to their Sabbath, which saith he, is nothing but preaching, Sunday no Sabbath, p. 6, 7.

And again, p. 20. Hence it is, saith he, that some for want of wit, some for too much, adore the Sabbath as an image dropped down from Jupiter, and cry before it as they did before the golden calf; This is an holy day to the Lord: whereas it is indeed the great Diana of the Ephesians, as they use it.

And a little after, yet to die they will call it a Sabbath; presuming in their zealous ignorance or guileful zeal, to be thought to speak the scripture phrase, when indeed the dregs of Ashdod flow from their mouths; for that day which they nickname the Sabbath, is either no day at all, or not the day that they mean.

Whereas *sabbatum* signifies a day of sacred rest consecrated to God; whence all such days are in scripture, called sabbaths as well as the seventh day. Therefore the Lord's day may be so termed without any danger of Judaism, as well as Easter is still called Pasca, and Whitsunday Pentecost, though Jewish words and institutions.

## 11. Touching Martyrs and Witnesses of the Christian faith and truth.

He reproaches and slanders all those blessed martyrs that have resisted and withstood the cursed heresies of the church of Rome, in all ages, and particularly our own English martyrs, as appears in a most remarkable passage that he sets down in his *Altare Christianum*, c. 16,

p. 114. The words are these, "This was the holy and profitable use of these diptiches, much unlike that list of persons censured by holy church, called with some reproach of truth and Christian religion, "*Catalogus testimonium veritatis*."

[This book was set forth by Illyricus, and is thus intitled, A Catalogue of the Witnesses of the Truth, which before our time, have opposed and resisted the primacy of the bishops of Rome, and divers superstitions, errors and deceits of popery; as namely, John Hus, Jerome of Prague, Luther, with divers others, which the church of Rome therefore condemned; which Romish church, this great champion thereof, terms holy church; and these faithful Christians and true martyrs and confessors, he saith were censured by holy church, that is, the church of Rome, for that only censured them; and therefore he saith, they are called witnesses of the truth, to the reproach of truth and Christian religion. Where he plainly and openly declares himself to fight for the church of Rome, against the true church of Christ.]

And then for our own English martyrs, he goes on thus: And as unlike a calender that I have seen, wherein the holy martyrs and confessors of Jesus Christ, who not only had place sometimes in these diptiches, but whose names are written in heaven, are erased out, and traitors, murderers, rebels, and heretics set in their room, if the best of our chronicles deserve credit, that if Penry, Hacket or Legat, had come in time, they might have challenged as orient and scarlet coloured a dye as some of them.

[This he speaks of the calender prefixed to the book of martyrs, where the popish saints are omitted, and our English martyrs names inserted, whom he terms traitors, murderers, rebels and heretics. And that this he means, is most evident, because there is no other calender but it alone, and one almanack taken out of it, of this nature; and because he refers to our English chronicles, and to our English sufferers.]

## 12. Touching Saint Paul.

He reproaches and slanders this blessed apostle; for he saith, that Saint Paul in setting things in order among the Corinthians, crossed the order used by Christ, and forbad the Corinthians to take their supper before the sacrament, which is utterly false, as appears by the apostle's own words, 1. Cor. 11, 22, and 34. Alt. Chr. p. 163. Again, Sunday no Sabbath, p. 3. he saith, that Saint Paul, contrary to his own rules given to the Corinthians, did administer the sacrament, and preach, where men did both eat and drink (wherein again he slanders the apostle: for he never gave any such rule to the Corinthians, as it is evident by the text itself) and he saith he continued preaching out of order till midnight.

So that he affirms, 1. That Saint Paul crossed Christ's order. 2. That he crossed his own



orders, and 3. That he did things out of order.

These among other corrupt, false wicked and popish points, are gathered out of his own books, and out of his own words, and here presented to the right honourable the Upper House of Parliament.

Seeing then it is most evident, that this wretched man hath come forth as a fierce enemy against Jesus Christ, and his everlasting truth; and as a great and a bold agent and factor for the Devil and Antichrist; may it therefore please this right honourable Assembly of Parliament, that by that strength which Almighty God hath given into your hands, he may be cast forth of the church of England, as dirt and dung, as one of the chist banes and pests thereof, who hath been one busy cause of all those wicked doctrines and Popish rites, and of all those horrible disorders and confusions that are among us, under the heavy burden whereof this whole kingdom groans and sighs for deliverance, that all others by his example may fear, and do no more any such thing.

When many of the chief points here expressed (for the time would not suffer the producing of them all) were brought forth in judgment against the Doctor, at a Committee of many lords, in the Painted Chamber, Feb. 11, the man was not able to make any reasonable Defence; for his parts and learning had quite forsaken him, if ever he had any, and he had nothing left in him but anger and passion to manage his cause; which provoked all good Christians to praise God, who had given his truth such a weak enemy; and error such a foolish patron. Whereupon, the day following, the House sent word him, as follows\*:

12 Feb. 1641.—The Upper House of Parliament did Sentence and resolve upon the question:

"1. That Doctor John Pocklington is by the Judgment of the House prohibited ever to come into the verge of the king's court. 2. That he is deprived of all his ecclesiastical livings, dignities, and preferments. 3. That he is disabled and held incapable hereafter to hold any place or dignity in the church or commonwealth. 4. That his two books, one intituled, "Alture Christianum," the other, "Sunday no Sabbath," be publicly burnt in the city of London, and the two Universities, by the hand of the common Executioner."

\* "Dr. Bray, one of the Archbishop's chaplains, who had licensed Pocklington's books, acknowledged his offence at the bar of the House, confessed that he had not examined the books with that caution that he ought, and made a public recantation in the church of Westminster. But Pocklington refusing to recant about thirty false propositions, which the Bishop of Lincoln [Williams] had collected out of his books, was sentenced by the Lord Keeper," &c. Neal's Hist. of the Puritans, vol. 2, p. 314. ed. 1759.

Ordered by the Lords, that all whom it concerns, shall put in execution the Judgment of this House against the said Doctor Pocklington.

Certain Articles against Master Pocklington, found in the records of the University of Cambridge, and truly transcribed by Master Tabor, which shew that the seed which brought forth all this cursed fruit, had taken root in him long ago.

1. After words of consecration, the body of Christ is so essentially, and inseparably present in the sacrament, as that *Hoc est corpus meum* must be taken plainly as it sounds, not drawing of any manner of trope or figure therein, not thinking that the spirit in so great a mystery should play the vain and idle rhetorician.

2. Hereof being reprehended by master Belcanquall, he more peremptorily defended it; affirming, that except the bare word alone of transubstantiation, he could find no fault at all in Bellarmine's doctrine of the sacrament.

3. He was much offended that this question should be propounded in our schools, '*Secessio ab Ecclesia Romana fuit necessaria.*'

4. He wondered at one of our fellows, who having opportunity, would not be present at Mass, it being a thing both requisite and lawful, in as much as there was a lawful ministry, giving no other thing than what we have in our sacrament.

5. He affirmed it to be an evident sign how acceptable the Romish religion was to God in former ages, because there were not then in the times of popery, so many murders, adulteries, robberies, &c. as since have been in the time of protestancy.

6. He counselled younger men beginning to study divinity, wholly to rely upon Cassander's Consultations, as himself there had done, as the safest author for resolution about the true church.

7. On a Gun-powder Treason day, he was offended at an oration made by a scholar, wherein traitor Faux was with fitting terms detested, and his matchless impiety execrated: He said it was a great offence of our church to speak evil of any that are dead.

8. By the masters not regarding it, our College is very ill reported of abroad, for corruption in religion, and scandalous opinions, which is occasioned by the master's deputy, who oftentimes useth, and that before young gentlemen, and other young students, with great eagerness of words and countenance, to argue for pontifical doctrines, never drawing to any contrary conclusion whereby to inform them otherwise.

9. He held that Christ's righteousness could not be imputed to us.

10. That our sins were no way imputed to Christ.

11. That interpretation of Scripture should be made, not by Scripture, but by exposition, of holy men.

12. That Bellarmine and Baronius in all worth, far exceeded all protestant divines, wishing that our religion were as well defended by our men, as theirs is by them.

13. That Tortura Torti, and Responsio ad Apologiam Bellarmuni were works of small worth, solidity and gravity.

14. He professed also in his sermon, the like belief of the bread and wine in the sacrament, to be verily turned into the flesh of Christ, as he believed Moses rod to be verily turned into a serpent, though the sensible mutation were not there.

15. He laboured also therein to answer the objection which the protestant divines make against the pontifical doctrines of the sacrament.

16. At a public disputation with us, where he maintained '*Romanam Ecclesiam esse veram, visibilem Christi Ecclesiam;*' being

admonished by master Belcanquell respondent, that doctor Whittakers, doctor Fulke, doctor Abbott, doctor Downham, master Calvin, monsieur de Plessis, Sadael, Moulin, and many more of our divines held the contrary; he notwithstanding with great vehemency slighted all that so said, '*impios, sceleratos, perniciosos*' 'atque in ipsum Christum blasphemos,' with other words to that effect: whereof the master when he was publicly admonished, would take no notice.

17. The college also from whence he came had some jealousies of him, and publicly in a divinity act *pro gradu*, he was so offensive, that for fear he should lose his degree, he afterwards, whether by command or counsel we know not, made an apologetical retraction in a public sermon, of those offences that he had given in that act of his.

198.. The Trial of the Hon. Colonel JOHN PENRUDDOCK,\* at Exon, for High Treason: 7 CHARLES II. A. D. 1655. [Written by Himself.†]

UPON Thursday the 19th of April 1655, the Commissioners of Oyer and Terminer being sat in the Castle of Exon, summoned before them

myself, Mr. Hugh Grove, Mr. Richard Reeves, Mr. Robert Duke, Mr. George Duke, Mr. Thomas Fitz-James, Mr. Francis Jones, Mr.

\* "When Penruddock's trial was brought on, there was a special messenger sent to Judge Hale, requiring him to assist at it. It was in vacation time, and he was at his country house at Alderley; he plainly refused to go, and said, The four terms and two circuits were enough, and the little interval that was between was little enough for their private affairs, and so he excused himself; but, if he had been urged he would not have been afraid of speaking more plainly." *Burnet's Life and Death of sir Matthew Hale.*

† Clarendon, after speaking of the various insurrections of Charles the Second's friends, which had been projected and proposed to the king a little before this time, says: "There cannot be a greater manifestation of the universal prejudice and aversion in the whole kingdom towards Cromwell, and his government, than that there be so many designs and conspiracies against him, which were communicated to so many men, and that such signal and notable persons could resort to London, and remain there, without any such information or discovery, as might enable him to cause them to be apprehended; there being no body intent and zealous to make any such discoveries, but such whose trade it was for great wages to give him those informations, who seldom care whether what they inform be true or no. The earl of Rochester consulted with great freedom in London with the king's friends; and found that the persons imprisoned were only taken upon general suspicion, and as being known to be of that party, not upon

any particular discovery of what they designed or intended to do; and that the same spirit still possessed those who were at liberty. The design in Kent appeared not reasonable, at least, not to be put upon; but he was persuaded, and he was very credulous, that in the North there was a foundation of strong hopes, and a party ready to appear powerful enough to possess themselves of York; nor had the army many troops in those parts. In the West likewise there appeared to be a strong combination, in which many gentlemen were engaged, whose agents were then in London, and were exceedingly importunate to have a day assigned, and desired no more than that sir Joseph Wagstaff might be authorised to be in the head of them; who had been well known to them; and he was as ready to engage with them. The earl of Rochester liked the countenance of the North better; and sent Marmaduke Darcy, a gallant gentleman, and nobly allied in those parts to prepare the party there; and appointed a day and place for the rendezvous; and promised to be himself there; and was contented that sir Joseph Wagstaff should go into the West; who upon conference with those of that country, likewise appointed their rendezvous upon a fixed day, to be within two miles of Salisbury. It was an argument that they had no mean opinion of their strength, that they appointed to appear that very day when the judges were, to keep their assizes in that city, and where the sheriff, and principal gentlemen of the county were obliged to give their attendance. Of both these resolutions the earl of Rochester, who

Edward Davis, Mr. Thomas Poulton, and Mr. Francis Bennet. Being all called to the bar, we were commanded to hold up our heads, and

knew where the king was, took care to advertise his majesty; who, from hence, had his former faint hopes renewed; and in a short time after they were so improved, that he thought of nothing more, than how he might with the greatest secrecy transport himself into England; for which he did expect a sudden occasion.

"Sir Joseph Wagstaff had been formerly a Major General of the foot in the king's Western army, a man generally beloved; and though he was rather for execution than counsel, a stout man, who looked not far before him; yet he had a great companionableness in his nature, which exceedingly prevailed with those, who, in the intermission of fighting, loved to spend their time in jollity and mirth. He, as soon as the day was appointed, left London, and went to some of his friends houses in the country, near the place, that he might assist the preparations as much as was possible. Those of Hampshire were not so punctual at their own rendezvous, as to be present at that near Salisbury at the hour; however, Wagstaff, and they of Wiltshire, appeared according to expectation. Penruddock, a gentleman of a fair fortune, and great zeal and forwardness in the service, Hugh Grove, Jones, and other persons of condition, were there with a body of near two hundred horse well armed; which, they presumed, would every day be improved upon the access of those who had engaged themselves in the Western association, especially after the fame of their being up, and effecting any thing, should come to their ears. They accounted that they were already strong enough to visit Salisbury in all its present lustre, knowing that they had many friends there, and reckoning that all who were not against them, were for them; and that they should there increase their numbers both in foot, and horse; with which the town then abounded; Nor did their computation and conjecture fail them. They entered the city about five of the clock in the morning: they appointed some officers, of which they had plenty, to cause all the stables to be locked up, that all the horses might be at their devotion; others, to break open the gaols, that all there might attend their benefactors. They kept a good body of horse upon the market-place, to encounter all opposition; and gave order to apprehend the judges and the sheriff, who were yet in their beds, and to bring them into the market-place with their several Commissions, not caring to seize upon the persons of any others.

"All this was done with so little noise or disorder, as if the town had been all of one mind. They who were within doors, except they were commanded to come out, stayed still there, being more desirous to hear than to see what was done; very many being well pleased, and not willing that others should discern it in

an Indictment of High Treason was read against us: And being asked whether we would plead Guilty or Not Guilty to the Indictment, in the

their countenance. When the judges were brought out in their robes, and humbly produced their commissions, and the sheriff likewise, Wagstaff resolved, after he had caused the king to be proclaimed, to cause them all three to be hanged, who were half dead already, living well considered, with the policy which men in such actions are naturally possessed with, how he himself should be used if he were under their hands, choosing therefore to be beforehand with them. • But he having not thought fit to deliberate this before-hand with his friends, whereby their scrupulous consciences might have been confirmed, many of the country gentlemen were so startled with this proposition, that they protested against it; and poor Penruddock was so passionate to preserve their lives, as if works of this nature could be done by halves, that the major general durst not persist in it; but was prevailed with to dismiss the judges, and, having taken then their commissions from them, to oblige them upon another occasion to remember to whom they owed their lives, resolving still to hang the sheriff; who positively, though humbly, and with many tears, refused to proclaim the king; which being otherwise done, they likewise prevailed with him rather to keep the sheriff alive, and to carry him with them to redeem an honest man out of the hands of their enemies. This seemed an ill omen to their future agreement, and submission to the commands of their general; nor was the tenderheartedness so general, but that very many of the gentlemen were much scandalised at it, both as it was a contradiction to their commander in chief; and as it would have been a seasonable act of severity to have cemented those to perseverance who were engaged in it, and have kept them from entertaining any hopes but in the sharpness of their swords.

"The noise of this action was very great both in and out of the kingdom, whither it was quickly sent. Without doubt it was a bold enterprise, and might have produced wonderful effects, if it had been prosecuted with the same resolution, or the same rashness, it was entered into. All that was reasonable in the general contrivance of insurrection and commotion over the whole kingdom, was founded upon a supposition of the division and faction in the army; which was known to be so great, that it was thought Cromwell durst not draw the whole army to a general rendezvous, out of apprehension that, when they should once meet together, he should no longer be master of them. And thence it was concluded, that, if there were in any one place such a body brought together as might oblige Cromwell to make the army, or a considerable part of it to march, there would at least be no disposition in them to fight to strengthen his authority, which they abhorred. And many did at that time

behalf of myself and of the gentlemen therein charged, I spake as followeth

*Col<sup>l</sup> Penruddock.* My l<sup>ds</sup>, though my education hath been such, as not to give me those advantages which the knowledge of the laws would have assisted me with, for the defending myself, yet upon the hearing this very indictment, my reason tells me that it is illegal, and, therefore I do demand counsel, that may dispute the illegality thereof

*Serjeant Glyn.* Sir, you desire that which

believe, that if they had remained with that party at Salisbury for some days, which they might well have done without any disturbance, then numbers would have much increased, and their friends farther West must have been prepared to receive them, when a retreat had been necessary by a stronger part of the armies marching against them. Cromwell him self was alarmed, he knew well the distemper of the kingdom, and in his army, and now when he saw such a body gathered together without any noise, that durst, in the middle of the kingdom, enter into one of the chief cities of it, when his judges and all the civil power of that country was in it, and take them prisoners, and proclaim the king in a time of full peace, and when no man durst so much as name him but with a reproach, he could not imagine, that such an enterprise could be undertaken without a universal conspiracy, in which his own army could not be innocent, and therefore knew not how to trust them together. But all this apprehension vanished, when it was known, that within four or five hours after they had performed this exploit, they left the town with very small increase or addition to their numbers.

"The truth is, they did nothing resolutely after their first action, and were in such disorder, and discontent between themselves, that without staying for their friends out of Hampshire (who were, to the number of two or three hundred horse, upon this day, and would have been at Salisbury that night) upon pretence that they were expected in Dorsetshire, they left the town, and took the sheriff with them, about two of the clock in the afternoon but were so weary of their dry's labour, and their watching the night before, that they grew less in love with what they were about, and differed again amongst themselves about the sheriff, whom many desired presently released, and that party carried it in hope of receiving good offices afterwards from him. In this manner they continued on their march Westward. They from Hampshire, and other places, who were behind them, being angry for their leaving Salisbury, would not follow, but scattered themselves, and they who were before them, and heard in what disorder they had left Wiltshire, likewise dispersed, so that when they had continued their journey into Devonshire, without meeting any who would join with them, horse and men were so tired for want of meat and sleep, that one single troop of horse, inferior

cannot be granted; therefore give your answer, whether you are Guilty or Not Guilty of the Treason of which you stand charged

*Penruddock.* Sir, by your favour, it is that which hath been granted to my inferiors, viz. to Mr. Lilburne, and to one Rolf a shoemaker; and I have as great a right to the laws, as any person that sits here as my judge: I do therefore challenge it as my right. Judge Nicholas, whom I there see, will tell you he himself was counsel for this Rolf: And it is a hard case, if

in number, and commanded by an officer of no credit in the war, being in those parts by chance, followed them at a distance, till they were so spent, that he rather retreated than compelled them to deliver themselves, some, and amongst those Wagstaff, quitted their horses, and found shelter in some honest men's houses, where they were concealed till opportunity served to transport them into the parts beyond the seas, where they arrived safely. But Mr Penruddock, Mr Grove, and most of the rest, were taken prisoners, upon promise given by the officer that their lives should be saved, which they quickly found he had no authority to make good. For Cromwell no sooner heard of his cheap victory, than he sent judges away with a new commission of Oyer and Terminer, and order to proceed with the utmost severity against the offenders. But Roles, his chief justice, who had so luckily escaped at Salisbury, had not recovered the fright, and would no more look those men in the face who had dealt so kindly with him; but expressly refused to be employed in the service, raising some scruples in point of law, whether the men could be legally condemned, upon which Cromwell, shortly after, turned him out of his office having found others who executed his commands. Penruddock, and Grove, lost their heads at Exeter, and others were hanged there, who having recovered the funtness they were in when they rendered, died with great courage and resolution, professing their duty and loyalty to the King many were sent to Salisbury, and tried and executed there, in the place where they had so lately triumphed, and some who were condemned, where there were fathers, and sons, and brothers, that the butchery might appear with some remorse, were reprieved, and sold, and sent slaves to the Barbadoes, where their treatment was such, that few of them ever returned into their own country. Thus this little fire, which probably might have kindled and inflamed all the kingdom, was for the present extinguished in the West; and Cromwell secured without the help of his army, which he saw, by the countenance it then shewed when they thought he should have use of them, it was high time to reform; and in that he resolved to use no longer delay."

In the third volume of Thurloe's State Papers are several letters and other documents relative to this and the contemporaneous insurrections.

a free-born gentleman of England cannot have the same privilege that his inferiors have had before him.

*Attorney General* (Mr. Prideaux). Sir, there is a great difference between treason acting and acted; the latter is your case: Therefore flatter not yourself, and do not think your being mute shall save your estate in case of treason; for if you plead not to the Indictment, Sentence will be pronounced against you, as if you had been found guilty of the fact you are charged with.

*Penruddock*. I observe your distinction: But all the logic you have, shall not make me nor any rational man acknowledge, that this was either acting or acted, before it be proved Sir, it is but bare suspicion, and I hope you will not condemn me before I am convicted: I say the Indictment is illegal, and I do demand counsel.

*Att. Gen.* Sir, the Court must not be deluded withal: I do peremptorily demand of you, are you Guilty or Not Guilty? If you plead, you may have favour; otherwise we shall proceed to Sentence.

*Penruddock*. Sir, put case I do plead, shall I then have counsel allowed me?

*Att. Gen.* Sir, the Court makes no bargains; refer yourself to us.

[Hereupon my fellow-prisoners persuaded me to plead Not Guilty: Which being done, I demanded counsel, as being partly promised it Mr. Attorney told me, I could have none. Then I replied;]

*Penruddock*. Sir, *durus est hic sermo*, it is no more than I expected from you; but rather than I will be taken off unheard, I will make my own Defence as well as I can.

[The Jurors being then called, I challenged about 24 of the 35 I might have challenged. The rest of the gentlemen were sent from the bar, I was left alone upon my Trial: And the Jurors were so packed, that had I known them the issue had been the same that it was. The Jurors being sworn, and the Indictment again read, Mr. Attorney demanded what Exception I could make to it.]

*Penruddock*. Sir, I except against every part thereof; for I take it to be illegal *in toto composito*.

*Recorder Steel*. Sir, it is not usual for any Court to admit of general Exceptions, therefore we expect that you should make it to some particular.

*Penruddock*. Sir, I desire a copy of my Indictment, and time until to-morrow to make my Defence.

*Att. Gen.* Sir, you cannot have it; the Court expects you should do it now.

*Penruddock*. Then if I cannot have time, if my general Exception might have been admitted, it would have told you, that there can be no High-Treason in this nation, but it must be grounded either upon the common or statute law. But this is neither grounded upon the

common law, or the statute: ergo, no treason (against a Protector, who hath no power according to law): Neither is there any such thing in law as a Protector, for all treasons and such pleas are *propria causa regis*.

*Serj. Glyn*. Sir, you are peremptory; you strike at the government; you will fare better a whit the better for this speech: Speak as to any particular Exception you have to the Indictment.

*Penruddock*. Sir, if I speak any thing which grates upon the present government, I may confidently expect your pardon: My life is as dear to me, as this government can be to any of you. The holy prophet David, when he was in danger of his life, feigned himself mad, and the spittle hung upon his beard: You may easily therefore excuse my imperfections. And since I am now forced to give you my particular Exception, more plainly, to the Indictment, I am bold to tell you, I observe in the latter part of the Indictment, you say I am guilty of High-Treason, by virtue of a statute in that case made and provided: If there be any such statute, pray let it be read; I know none such. My actions were for the king; and I well remember what Bracton saith [5 Tract. de De-latis cap.], 'Rex non habet superiorem nisi Deum; satis habet ad penam, quod Deum expectat ultorem.' And in another place he saith, [Bract. Rein. II. 3, cap. 3, sect. 24.] 'Rex habet potestatem et jurisdictionem super omnes qui in regno suo sunt: Ea quæ sunt jurisdictionis et pacis, ad nullum pertinent, nisi ad regiam dignitatem; habet etiam coercionem, ut delinquentes puniat et coercent.' Again he saith, 'Omnes sub rege, et ipse nullo nisi tantum Deo; non est inferior sibi subiectis; non parem habet in regno suo.' This shews us where the true power is: You shall find also, That whoever shall refuse to aid the king when war is levied against him, or against any that keep the king from his just rights, offends the law, and is thereby guilty of treason. [Parl. Rol. ann. 7.] Again, All men that adhere to the king in personal service, are freed from treason by law: [Rex et consuetudo Parliament. II. 7, cap. 1.] And yet you tell me of a statute, which makes my adhering to my king according to law, to be High-Treason: Pray let it be read.

*Att. Gen.* Sir, you have not behaved yourself so as to have such a favour from the Court.

*Penruddock*. I require it not as a favour, but as my right.

*Att. Gen.* Sir, you cannot have it.

*Penruddock*. If I cannot have it, these gentlemen that are the Jurors, have not offended you, their verdict reaches to their souls, as to my life; pray let not them go blind-fold, but let that statute be their guide.

*Att. Gen.* Sir, the Jury ought to be satisfied with what hath been already said, and so might you too.

*Penruddock*. Sir, I thank you; you now tell me what I must trust to.

Mr. Attorney then made a large speech in

the face of the Court, wherein he aggravated the offence with divers circumstances; as saying, I had been four years in France, and held a correspondence with the king my master, of whom I had learned the Popish religion: That I endeavoured to bring in a debauched, lewd young man, and to engage this nation in another bloody war; and that if I had not been timely prevented, I had destroyed them (meaning the Jurors), and their whole families. I interrupted him, and said,

*Penruddock.* Mr. Attorney, you have been heretofore of counsel for me; you then made my case better than indeed it was; I see you have the faculty to make men believe falsehoods to be truth too.

*Att. Gen.* Sir, you interrupt me; you said but now you were a gentleman.

*Penruddock.* I have been thought worthy heretofore to sit on the bench, though now I am at the bar.

[Mr. Attorney then proceeded in his speech, and called the witnesses.]

Then I said, Sir, you have put me in a bear's skin, and now you will bait me with a witness. But I see the face of a gentleman here in Court (I mean captain Crook) whose conscience can tell him, that I had Articles from him which ought to have kept me from hence. Captain Crook hereupon stood up, and his guilty conscience, I suppose, advised him to sit down again, after he had made this speech, that is to say, he opened his lips and spake nothing. The several witnesses now come in. Mr. Dove the sheriff of Wilts and others; my charity forbids me to tell you what many of them swore: I shall therefore omit that, and only tell you that one of our own party, and indeed I think an honest man, being forced to give his evidence; I said, My lords, it is a hard case that when you find you cannot otherwise cleave me in pieces, that you must look after wedges made of my own timber. The virtuous crier of Blandford being asked what were the words I used in the proclaiming king Charles at the market? he said, I declared for Charles the second, and settling the true protestant religion: for the liberty of the subject, and privilege of parliaments.

Then I said to the Attorney General and the whole Court, You said even now, that I had learned of the king my master the popish religion, and endeavoured to bring him in; your own witness tells you what and whom I would bring in; and that it was the true protestant and not the popish religion his majesty is of, and intends to settle. I urged divers cases to make the business but a riot, as my lord of Northumberland's, pretending that it was for the taking of taxes; and that the power was not declared to be where they say it is. I required the judges to be of counsel for me, and told them it was their duty. Commissioner Lisle told me, I should have no wrong, (but he meant right); but judge Rolle and Nicholas confessed themselves parties, therefore would

say nothing. Then I told the Court, if I had seen a crown upon the head of any person, I had known what had been treason: The law of England would have taken hold of me, out of the respect it has to monarchy: There were no such land-marks before me, therefore I conceive I cannot be guilty of what I am charged with. And my lord, and Mr. Attorney, you here indict me for a treason committed at South-Moulton in Devonshire; and gentlemen, ye swear witnesses against me for facts done in other countries; Sarum, Blandford, and South-Moulton, are not in a parish. You puzzle the jurors with these circumstances, pray go to the kernel. And you, gentlemen of the jury, save your labour by taking those notes. Mr. Attorney then addressed himself to the jury; and to be short after the space of half an hour long, gave them directions to bring me in guilty. This being done, I craved the favour from the Court, that I might speak to the jury: which being allowed, I said to them as followeth, or to the same effect:

Gentlemen; You are called a jury of life and death; and happy will it be for your souls, if you prove to be a jury of life. You have heard what hath been said to make my actions treason; and with what vigour many untruths have been urged to you. I have made appear to you, that there can be no treason but against the king; that the law knows no such person as a Protector. Mr. Attorney pretends a statute for it, but refuseth the reading thereof either to me or you; vilifies me at pleasure, and tells you that I am a papist, and would bring in the popish religion; and that if I had not been timely prevented I had destroyed you. I hope you are also satisfied of the contrary, from the mouth of one of the bitterest witnesses. You are now judges between me and these judges. Let not the majesty of their looks, or the glory of their habits, betray you to a sin which is of a deeper dye than their scarlet; I mean that sin, blood: which calls to heaven for vengeance. Gentlemen, you do not see a hair on my head, but is numbered, neither can you make any one of them, much less can you put breath into my nostrils, when it is taken out. A sparrow doth not fall to the ground without the providence of God, much less shall man, to whom he hath given dominion and rule over all the creatures of the earth. Gentlemen look upon me, I am the image of my creator, and that stamp of his which is in my visage, is not to be defaced, without an account given wherefore it was. I have here challenged, as I am a gentleman, and free-born man of England, the right which the law allows me; I demanded a copy of my Indictment and Counsel, but it is denied me. The law which I would have been tried by, is the known law of the land, which was drawn by the wise consultation of our princes, and by the ready pens of our progenitors. The law which I am now tried by, is no law, but what is cut out by the point of a rebellious sword; and the sheets in which they are recorded, being varnished with the mois-

ture of an eloquent tongue, if you look not well to it, may chance to serve for some of your shrouds. If the fear of displeasing others, shall betray you to find me guilty of any thing, you can at the most but make a riot of this. Pray, by the way, take notice, that the last parliament would not allow the legislative power to be out of themselves; seventeen of twenty in this very county were of that opinion, and deserted the House; they were your representative; if you should find me guilty, you bring them in danger, and in them yourselves. Have a care of being drawn into a snare. Gentlemen, your blood may run in the same channel with mine: If what I have said do not satisfy you, so as to acquit me; if you bring a special verdict, you do in some measure acquit yourselves, and throw the blood that will be spilt upon the judges. Consider of it, and the Lord direct you for the best!

The jury, after a quarter of an hour's retirement, brought me in Guilty: The Lord forgive them, for they knew not what they did.

Upon Monday the 23d of April, we were again called to the bar, being then in number twenty-six. Serjeant Glyn asked of me first, what I could say for myself, that I should not have sentence according to law? Then I said,

My Lords and Gentlemen, you ask what I can say for myself, that I should not have Sentence passed upon me. The Jury found me Guilty: If I should go about to make a Defence now, it would signify no more than as if my friends should petition for my pardon after I am executed. I could have offered you Articles here, but I thought them inconsistent with this Court. When I look upon my offence (as to the Protector), I conclude myself a dead man; but when I reflect upon the favour he hath shewed to others of my condition, and the hopes I have of your intercession, methinks I feel my spirits renewed again. My lords, death is a debt due from me to nature; the Protector has now the keeping the bond, and has put it in suit by his Attorney; if he please to forbear the serving me with an execution, and let me keep it a little longer, I will pay him the interest of thanks for it as long as I live, and engage my posterity and a numerous alliance to be bound for me. So the Lord direct you all for the best. If I have found favour, I shall thank you; if not, I shall forgive you!

This being done, serjeant Glyn, after a most bitter and nonsensical speech, gave Sentence against us; viz. to be drawn, hanged and quartered. A pretty exchange for unworthy Crook's Articles for life, liberty, and estate; which I can prove, and will die upon. My Trial held at least five hours. This is as much as at present I can remember of it; excuse the errors.

One of the Jury being asked by a gentleman, why he found me guilty? answered, He was resolved to hang me, before he did see me.

I observe treason in this age to be an *indivisum eorum*, like the wind in the Gospel, which bloweth where it listeth; for that shall be trea-

son in me to-day, which shall be none in another to-morrow, as it pleaseth Mr. Attorney.

The Judges are sworn to do justice according to the law of the land, [3 Part. Inst. 22. 3 Part. Inst. 47, 48. Prince's Case, 8 Report.] and therefore have miserably perjured themselves in condemning me contrary to law: And (not so contented) must cause the jury (so wise they were) through their false and unjust directions, to destroy their own rights and properties, and set up a new, arbitrary and tyrannical government.

The judges would not give me their advice in point of law (as was their duty,) because they said they were parties; yet could sit still on the bench in their robes, to countenance and approve of my sentence. No man can be a judge where he is a party in the same cause; [Hobart, fol. 120. Dr. Bonam's Case, 8 Part. of Coke's Reports.] therefore my trial was contrary to law. The Judges being parties, ought not to sit upon the bench, but stand by; therefore my trial was illegal: The rest being no judges, but the Protector's immediate servants, so could not be my judges in case of High-Treason; for none but the sworn judges of the land are capable of it by law.

One thing of col. Dove, the reverend sheriff of Wilts, who, that the jury might be sufficiently incensed, complaining of the many incivilities he pretended were offered him by our party, being upon his oath, said, That one of our men did run him through the side with a carbine. Surely it was a very small one, for the wound is not discernible.

A great deal of pains every man in his place took for the carrying on his master's work.

'Be merciful unto me, O Lord, be merciful unto me: Under the shadow of thy wings will I hide myself till this tyranny be overpast.'

'Glory to God on high, on earth peace, goodwill towards men; and so have mercy on me, O Lord!'

The Sentence was ordered to be executed the 16th of May following.

As he was ascending the scaffold, he said, This, I hope, will prove to be like Jacob's ladder; though the feet of it rest on earth, yet I doubt not but the top of it reacheth to heaven.

When he came upon the Scaffold, he spoke to the people as follows:

Gentlemen; It hath ever been the custom of all Persons whatsoever, when they come to die, to give some satisfaction to the world, whether they be guilty of the fact of which they stand charged. The crime for which I am now to die, is Loyalty, but, in this age called High Treason. I cannot deny but I was at Southmoulton, in this county; but whether my being there, or my actions there, amount to so high a crime as High Treason, I leave to the world and to the law to judge: truly, if I were conscious to myself of any base ends that I had in this undertaking, I would not be so injurious to my own soul, or disingenuous to you, as not to make a public acknowledgment thereof. I suppose

that divers persons, according as they are biased in their several interests and relations, give their opinions to the world concerning us: I conceive it impossible, therefore, so to express myself in this particular, as not to expose both my judgment and reputation to the censure of many whom I shall leave behind me; because I will not put others, therefore, upon a breach of charity concerning me, or my actions, I have thought fit to decline all discourses which may give them a capacity either to injure themselves or me. My trial was public, and my several examinations, I believe, will be produced when I am in my grave: I will refer you there ore to the first, which I am sure some of you heard; and to the latter, which many of you, in good time, may see. Had Captain Crook done himself and us that right which a gentleman and a soldier ought to have done, I had not now been here. The man I forgive with all my heart: but truly, gentlemen, his protesting against those Articles he himself with so many protestations and importunities put upon us, hath drawn so much dishonour and blood upon his head, that I fear some heavy judgment will pursue him; though he hath been false to us, I pray God I do not prove a true prophet to him; nay, I must say more, that coming on the road to Exon, he, the said Captain Crook, told me, Sir Joseph Wagstaff was a gallant gentleman, and that he was sorry he was not taken with us; that then he might have had the benefit of our Articles; but now, said he, I have beset all the country for him, so that he cannot escape, but must be hanged. He also questioned me, as I passed through Salisbury from London, whether he had given me conditions; which I endeavouring to make appear to Major Butler, he interrupted me, and unwillingly confessed it, saying I proffered him four hundred pounds to perform his Articles; which had been a strange proffer of mine, had I not really conditioned with him; and I told him then, having found him unworthy, I would have given him five hundred pounds, believing him to be mercenary. To make it yet farther appear I injure him not, by stiling him unworthy; after these Articles were given, he proffered to pistol me, if I did not persuade another house to yield, which then were boldly resisting; to which my servant, John Bihy, now a prisoner, replied, I hope you will not be so unworthy as to break the law of arms. Thus much I am obliged to say to the honour of the soldiery, that they have been so far from breaking any Articles given to others, that they have rather bettered them than otherwise. It is now our misfortune to be made precedents and examples together: but I will not do the Protector so much injury, as to load him with dishonour, since I have been informed, that he would have made our conditions good, if Crook, that gave them, had not abjured them. This is not a time for me to enlarge upon any subject, since I am now become the subject of death; but since the Articles were drawn by my hand, I thought myself obliged to a particular justification of them. I could tell

you of some soldiers which were turned out of his troop for defending those conditions of ours; but let that pass, and henceforward, instead of life, liberty and estate, which were the Articles agreed upon, let drawing, hanging and quartering bear the denomination of Captain Crook's Articles. However, I thank the Protector for granting me this honourable death. I should now give you an account of my faith; but, truly, gentlemen, this poor nation is rent into so many several opinions, that it is impossible for me to give you mine, without displeasing some of you; however, if any man be so critical as to enquire of what faith I die, I shall refer him to the Apostles, Athanasius, and the Nicene creed, and to the testimony of this reverend gentleman, Dr. Short, to whom I have unbosomed myself: and if this do not satisfy, look in the thirty-nine Articles of the Catholic Church of England, to them I have subscribed, and do own them as authentic. Having now given you an account concerning myself, I hold myself obliged in duty to some of my friends, to take off a suspicion which lies upon them; I mean, as to some persons of honour; which upon my examination I was charged to have held correspondence with; the marquis of Hertford, the marquis of Winchester, and my lord of Pembroke, were the persons nominated to me: I did then acquaint them, and do now second it with this protestation, that I never held any correspondence with either, or any of them, in relation to this particular business, or indeed to any thing which concerned the Protector or his government: as for the marquis of Winchester, I saw him some twelve years since, and not later; and if I should see him here present I believe I should not know him; and for the earl of Pembroke, he was not a man likely to whom I should discover my thoughts, because he is a man of contrary judgment. I was examined likewise concerning my brother Fieke, my cousin Hastings, Mr. Dorrington, and others: it is probable their estates may make them liable to this my condition; but I do here so far acquit them, as to give the world this further protestation, that I am confident they are as innocent in this business as the youngest child here: I have no more to say to you now, but to let you know that I am in charity with all men, I thank God; I both can and do forgive my greatest persecutors, and all that ever had any hand in my death. I have offered the Protector as good security for my future demeanour, as I suppose he could have expected; if he had thought fit to have given me my life, certainly I should not have been so ungrateful as to have employed it against him. I do humbly submit to God's pleasure, knowing that the issues of life and death are in his hand; my blood is but a small sacrifice; if it had been saved, I am so much a gentleman as to have given thanks to him that preserved it, and so much a Christian as to forgive them which take it; but seeing God by his providence hath called me to lay it down, I willingly submit to it, and



rible to nature ; but blessed be my Saviour, who hath taken out the sting ; so that I look upon it without terror. Death is a debt, and a due debt ; and it hath pleased God to make me so good a husband that I am come to pay it before it is due. I am not ashamed of the cause for which I die, but rather rejoice that I am thought worthy to suffer in the defence and cause of God's true church, my lawful king, the liberty of the subject, and privilege of parliaments ; therefore I hope none of my alliance and friends will be ashamed of it ; it is so far from pulling down my family, that I look upon it as the raising of it one story higher ; neither was I so prodigal of nature, as to throw away my life, but have used, though none but honourable and honest, means to preserve it. These unhappy times indeed have been very fatal to my family, two of my brothers already slain, and myself going to the slaughter ; it is God's will, and I humbly submit to that providence. I must render an acknowledgment of the great civilities that I have received from the city of Exon, and some persons of quality, and for their plentiful provision made for the prisoners. I thank Mr. Sheriff for his favour towards us, in particular to myself, and I desire him to present my due respects to the Protector, and though he had no mercy for myself, yet that he would have respect to my family. I am now a stripping off my clothes to fight a duel with death, I conceive no other duel lawful ; but my Saviour hath pulled out the sting of this mine enemy, by making himself a sacrifice for me, and truly I do not think that man deserving one drop of his blood that will not spend all for him in so good a cause. The truth is, gentlemen, in this age treason is an *individuum vagum* ; like the wind in the gospel, it bloweth where it listeth : So now treason is what they please, and lighteth upon whom they will. Indeed, no man, except he will be a traitor, can avoid this censure of treason. I know not to what end it may come, but I pray God my own and my brother's blood, that is now to die with me, may be the last upon this score : Now, gentlemen, you may see what a condition you are in without a king ; you have no law to protect you, no rule to walk by, when you perform your duty to God, your king, and country : you displease the arbitrary power now set up, (I cannot call it government). I shall leave you to peruse my Trial, and there you shall see what a condition this poor nation is brought into ; and (no question) will be utterly destroyed, if not restored, by loyal subjects, to its old and glorious government ; I pray God he lay not his judgments upon England for their sluggishness in doing their duty, and readiness to put their hands in their bosoms, or rather taking part with the enemy of truth. The Lord open their eyes that they may be no longer led or drawn into such snares, else the child that is unborn will curse the day of their parents birth. God Almighty preserve my lawful king, Charles II. from the hands of his enemies, and break

down that wall of pride and rebellion, which so long hath kept him from his just rights ! God preserve his royal mother, and all his majesty's royal brethren : and incline their hearts to seek after him ! God incline the hearts of all true Englishmen to stand up as one man to bring in the king, and redeem themselves and this poor kingdom out of its more than Egyptian slavery. As I have now put off these garments of cloth, so I hope I have put off my garments of sin, and have put on the robes of Christ's righteousness here, which will bring me to the enjoyment of his glorious robes anon.—Then he kneeled down and kissed the block, and said thus : I commit my soul to God my Creator and Redeemer. Look upon me, O Lord, at my last gasping, hear my prayer, and the prayers of all good people ; I thank thee, O God, for all their dispensations towards me.—Then kneeling down, he prayed most devoutly as follows :

“ O Eternal, Almighty, and most merciful God, the righteous Judge of all the world, look down in mercy on me a miserable sinner. O blessed Jesus, Redeemer of mankind, which takest away the sins of the world, let thy perfect manner of obedience be presented to thy heavenly Father for me. Let thy precious death and blood be the ransom and satisfaction of my many and heinous transgressions. Thou that sittest at the right hand of God make intercession for me. O holy and blessed Spirit which art the Comforter, fill my heart with thy consolations. O holy, blessed, and glorious Trinity, be merciful to me, confirm my faith in the promises of the Gospel, revive and quicken my hope and expectation of joys prepared for true and faithful servants. Let the infinite love of God my Saviour, make my love to him steadfast, sincere, and constant.

“ O Lord, consider my condition, accept my tears, assuage my grief, give me comfort and confidence in thee : impute not unto me my former sins, but most merciful Father receive me into thy favour, for the merits of Christ Jesus. Many and grievous are my sins, for I have sinned many times against the light of knowledge, against remorse of conscience, against the motions and opportunities of grace. But accept, I beseech thee, the sacrifice of a broken and contrite heart, in and for the perfect sacrifice, oblation, and satisfaction of thy son Jesus Christ. O Lord receive my soul after it is delivered from the burthen of the flesh, into perfect joy in the sight and fruition of thee. And at the general resurrection, grant at my body may be endowed with immortality, and received with my soul into glory.

“ I praise thee O God, I acknowledge thee to be the Lord, O Lamb of God, that takest away the sins of the world, have mercy on me. Thou that sittest at the right hand of God, hear my prayer. O Lord Jesus Christ, God and man, Mediator betwixt God and man, I have sinned as a man, be thou merciful to me as a God. O holy and blessed Spirit, help my in-

facilities with those sighs and groans which I cannot express."

Then he desired to see the axe, and kissed it, saying, I am like to have a sharp passage of it, but my Saviour hath sweetened it unto me. Then he said, If I wqu'd have been so unworthy as others have been, I suppose I might by a lye have saved my life, which I scorn to purchase at such a rate; I defy such temptations and them that gave them me. Glory be to God on high, on earth peace, goodwill towards men, and the Lord have mercy upon my poor soul! *Amen.*

So laying his neck upon the block, after some private ejaculations, he gave the headsman a sign with his hand, who at one blow severed his head from his body.

The night before his Execution he received the following Letter from his Lady :

' My dear Heart :

' My sad parting was so far from making me forget you, that I scarce thought upon myself since, but wholly upon you. Those dear embraces which I yet feel and shall never lose, being the faithful testimonies of an indulgent husband, have charmed my soul to such a reverence of your remembrance, that were it possible, I would, with my own blood, cement your dead limbs to life again; and (with reverence) think it no sin to rob heaven a little while longer of a martyr. O my dear! you must now pardon my passion, this being my last (ah fatal) word that ever you will receive from me; and know, that until the last minute that I can imagine you shall live, I will sacrifice the prayers of a Christian, and the groans of an afflicted wife. And when you are not (which sure by sympathy I shall know) I shall wish my own dissolution with you, that so we may go hand in hand to heaven. It is too late to tell you what I have, or rather what I have not done for you; how turned out of doors because I came to beg mercy; the Lord lay not your blood to their charge. I would fain discourse longer with you, but dare not; passion beging to drown my reason, and will rob me of my *devoir*, which is all I have left to serve you. Adieu therefore ten thousand times, my dearest dear! and since I must never see you more, take this prayer; may your faith be so strengthened, that your constancy may continue, and then I know heaven will receive you; whither grief and love will in a short time, I hope, translate, My dear, Your sad, but constant wife, even to love your ashes when dead.

' ARUNDEL PENRUDDOCK.'

' May the 15th, 1655, eleven o'clock at night. Your children beg your blessing, and present their duties to you.'

To which he wrote this Answer.

' Dearest, best of Creatures !

' I had taken leave of the world when I received yours: It did at once recall my fond-

ness for life, and enable me to resign it. As I am sure I shall leave none behind me like you, which weakens my resolution to part from you; so when I reflect I am going to a place where there are none but such as you, I recover my courage. But fondness breaks in upon me; and as I would not have my tears flow to-morrow, when your husband and the father of our dear babes is a public spectacle; do not think meanly of me, that I give way to grief now in private, when I see they shall run so fast, and I within few hours am to leave you helpless, and exposed to the merciless and insolent, that have wrongfully put me to a shameful death, and will object that shame to my poor children. I thank you for all your goodness to me, and will endeavour so to die, as do nothing unworthy that virtue in which we have mutually supported each other, and for which I desire you not repine that I am first to be rewarded; since you ever preferred me to yourself in all other things, afford me, with cheerfulness, the precedence in this.

' I desire your prayers in the article of death, for my own will then be offered for you and yours.

' J. PENRUDDOCK.'

In 3 Thurloe's State Papers, p. 391, is the following curious Article, intituled, "The Prisoners' Plea for themselves, at Exeter, April 18, 1655:"

1. We must enquire by friends of the jurors' names, and challenge any, whom we conceive engaged against us, and challenge them particularly, and give them no reason, for the law alloweth us to challenge 35 without shewing reason; but we must not challenge above 35, lest judgment pass against us as mutes, refusing legal trial, and so be pressed.

2. Besides the 35 challenged without cause shewn, we may challenge any, against whom we can shew cause; but the judge will declare whether it be a sufficient cause or no.

3. If any man hath named to the sheriff any one of the jurors remaining by any (saving his sworn officers, whose duty it is) and if two can prove it, the indictment and proceedings may be avoided by statute 11 Hen. 4, chap. 9.

4. We must not immediately upon the reading of the indictment plead Not Guilty, for then we can have no counsel allowed, nor be admitted afterwards to plead the illegality of the indictment; but so soon as we have heard the indictment read, we may say, we conceive the indictment not sufficient in law, and that therefore we desire counsel to speak for us at law, and this before we say Not Guilty.

5. If the judge ask us, why the indictment is insufficient, seeming to deny us counsel, we must say, it is neither grounded on the common law, nor statute; and the judges are sworn to execute only the laws.

6. If the indictment (as it will) do call the jury, jurors for the Lord Protector, then again let us alledge, that we are not legally indicted,

for there are no such persons by the law of England; for neither the common law, nor acts of parliament, do know or acknowledge any jurors for the Lord Protector.

7. If any alteration be made in the indictment by the judges, then desire, that the evidence to the grand inquest may be given at the bar in open court.

8. If one of the grand inquest stands outlawed, it makes void the indictment; and if we know any such, we may challenge them, and demand the indictment to be vacated by virtue of a statute, 11 Hen. 4, cap. 9, and if the judges bid us prove them to be outlawed, we may demand time, and we will bring it under seal.

9. We may desire a copy of the indictment, though the judges positively deny it, and urge my lord Coke for authority.

10. If we can find any incertainty in the indictment either in time or place, let us alledge it against the sufficiency of the said indictment.

11. If the indictment express not particularly some open deed we did in levying war, except against it as insufficient, and still insist upon the assignment of counsel to argue the whole, because it is a scruple in law worthy of great debate.

12. If the judges deny us counsel, tell them, others usually have had it, and particularly Mr. Norbury was counsel for col. Lilburne, and the now judges Nicholas and serjeant Maynard were counsel for capt. Rolph, when he was accused for treason against the king.

13. If the judges require it, give the exceptions in writing, but expunge what makes against us, if seen, and still obtain counsel, and urge Humphrey Stafford's cause in the 1st of Hen. 7, for precedent.

14. If after arguing the case by counsel, or before, the judge overrule the plea, then insist upon the same plea to the jury, and put it upon their consciences, that God hath made them our judges to judge between us and the judges; and that, if we be found guilty by the jury, our blood will be upon the jury, and the judges be acquitted; but if the jury find us not guilty, the jurors are innocent, if we die.

15. If the jury seems fearful to clear us absolutely, tell them the judges have overruled them; that it is safest for the jury to find a special verdict, which leaves the point in law to all the judges, whether or no it is treason, whereby also the jurors will leave all the danger that can follow, and all the bloodshed on the judges.

16. Tell the jury, that they are now to judge, whether or no we have committed treason; and if they judge that to be treason, which is no treason, our blood will be upon them; and there can be no treason, nor ever was in England, but such as is made so by the common law, or act of parliament.

17. Let every prisoner allow of one juror, whom another person hath challenged, and challenge him, whom another prisoner hath

allowed, whereby every one of us shall have almost a whole distinct jury for himself, which juries possibly will differ in their opinions, at least it will puzzle the prosecutors to get so many several juries; therefore let every prisoner have pen and ink ready to note the names of the several jurors for several persons, who for one, and who for another.

18. They cannot indict and try us all in one day, as it is in Kelloway. fol. 159, 6, which the Lord Chief Justice Rolle declared to be law in the case of the Portugal ambassador's brother.

19. If they indict us for felony, we may say it is no felony, except it be done with a felonious intent; and the country knows, we did not intend to steal, but only to borrow the horses, which is usual now a-days, and as the soldiers did now at London and elsewhere, who came against them; and the sheriff of the county was present, when divers horses were seized, and did himself seize some, which were none of ours.

20. Also ask the prosecutor upon the trial, whether he can take his oath, that we took the horses with a felonious intent; and if he will not swear it, then ask the jury, whether they can take it upon their oaths we stole the horses, where the prosecutor himself will not swear it.

21. Ask the prosecutor, whether he came voluntarily to prosecute against us; and if he did not, but was forced, then desire the jury to judge, whether, they that are come hither from London purposely, have not an intention to take away our lives.

22. If they indict us as traitors by any act of the long parliament, it will be for treason against the king, or against the commonwealth, and keepers of the liberty; we have done nothing against either of them, and let them prove it.

23. If they ground the indictment on any act or ordinance since the long parliament was dissolved, which was April 20, 1653, deny it to be an act; for the two last parliaments made no acts at all concerning treason, and there can be no treason by an ordinance. Therefore leave it upon the conscience of the jury, whether there be any laws to guide them in their verdict, besides common law and acts of parliament.

24. Tell the jury, that if the king had formerly with his council made a proclamation, order, or ordinance, declaring something to be treason, which neither the common law nor any act of parliament had so declared, that no jury hereupon durst have found any man guilty.

25. Alledge the case of Chief Just. Tresilian, sir Robert Belknappe, and other judges in 11 Rich. 2, who gave their opinions, that other facts were treason than what had been declared by authority of parliament, and did it so please the then present governor, were attainted of treason for their opinions, and by the parliament following 11 Rich. were made

examples for their treason. And in the 21 Rich. 2, the judges giving the like opinion, had no other excuse to avoid the attainder of treason in parliament the 1 Hen. 4, than that they durst say no otherwise for fear of death; but it was hereupon enacted; that no justice or other person whatever shall from thenceforth be admitted to say, that they durst not for fear of death speak the truth; so that no force nor fear can excuse any person, if he shall now declare any fact to be treason, which cannot be warranted by authority of parliament. Therefore leave it upon the conscience of the jury, whether they do believe we are indicted for any breach of any common law, or act of parliament; and if for neither, whether they can in conscience take our blood upon their heads.

26. If the judge pretend, that we alledge not matter of law sufficient for assignment of counsel, then urge, that the ordinance, whereupon the indictment is grounded, is not pursued: that at the time of the indictment there were not two lawful accusers or witnesses to the grand jury, which ought to be by the law. Or a prisoner may alledge, he is not rightly named in the indictment, or hath not his right title or addition, or the fact is not set down with sufficient certainty, and by some or all these we may get counsel assigned.

27. If the indictment be for levying war, alledge, that there is no such open deed set down as is sufficient in law, and in such case, desire counsel to argue it, and endeavour to make our bearing of arms only a riot or unlawful assembly, and not a levying of war; for every bearing of arms in a warlike manner is not by the law a levying of war, as was adjudged in the earl of Northumberland's case, 5 Hen. 4.

28. If we could say we met together upon some private revenge against the sheriff, or some private man, and not for the destruction or reformation of any law of the land, or to oppose any lawful authority, then unless two witnesses shall swear that we did declare some other end, the case must be resolved in law, whether it be a levying war; yet this point must not be insisted on, until the grand point in law be overruled by the court, viz. that the indictment is sufficient in law, notwithstanding it is not grounded upon the common law, or any act of parliament; for we ought to lose ground by inches.

29. If they proceed upon the indictment to give evidence against us, insisting upon it, that the matter of fact be proved by two sufficient lawful witnesses; then let their witnesses depose openly in court face to face, for the law exacts two lawful witnesses in case of treason by statute 1 Edw. 6, and 5 Edw. 6, cap. 11, and 1 and 2 Ph. and Mar. cap. 11. Let the witnesses be strictly examined, and put to swear punctually to the fact, &c. charged in the indictment as the open deed, declaring and levying of war; and that both witnesses swear to the same fact, and at the same time

and place, else they are but single testimonies to two facts of the same nature.

30. Insist upon it to make them prove the act or ordinance is a true copy of the parliament roll, and examine them upon oath, whether they examined it by that roll; (for it is possible they may have forgot to do it,) alledging that we are not to be tried by every private or printed paper, and demand it may not be read or given in evidence, until it be proved.

31. If they offer to prove by any intercepted letters, whereof they have copies, that we levied war, then deny those copies, and demand the originals; and if the originals could (which cannot) be produced, they can never prove them to be any of our hands, if we put them to it.

32. If the Commissioners that try us be serjeant Glynne or recorder Steele, or any other, who are not the ordinary judges at Westminster, tell the jury, that these are not the sworn judges of the law, but practitioners and pleaders, servants to the Lord Protector, and are made judges only for this purpose, to take our lives contrary to law, because the sworn judges refused it. If baron Thorpe comes, he is a sworn judge.

33. If the judges say, that the Lord Protector is invested with the same power, that the late governors, whether king or parliament, were invested with, tell the jury boldly, that the laws of England cannot be altered but by act of parliament, and therefore there was an act of parliament to change the government from the king, to the keepers of the liberties, anno 1619; but there is no act of parliament since to change the keepers of the liberty into a Lord Protector, so that there can be no treason to bear arms against the Lord Protector.

34. Tell the jury, that it is now our case, and they know not how soon it may be their own, for many were zealous for the present government, as the jury now can be, who have already felt, and others like to feel, the effect of their new ordinances: how safe and honourable it is for them to stick to the law, rather than take our blood upon them; and instance in John Lilburne's several juries; and if not to acquit us, yet to acquit themselves, by finding a special verdict, which leaves us to law, and lays the guilt of our blood upon the judges; and especially, how dangerous it is for the jury to prove, by shedding our blood, that the Lord Protector hath a legislative power, and that his ordinances are laws, when the late representative of the whole people in parliament refused to acknowledge them.

36. If indicted for treason upon the 25 Edw. 3, for levying war against the king, demand the statute to be read, beg the jury to observe when it is read, and then remember how all kingly government and authority was abolished by the act 1649, of the long parliament; and the Protector himself in several speeches declared, he was not, nor would be king. If they bid us show the speeches, where

he saith so, it is in the late speech, Jan. 22, 1654, p. 24, and in his declaration in April, 1653, where he saith, he desired the long parliament to prevent monarchy.

After which follows :

*Devon. ss.* The Names of the Prisoners indicted, attainted, and condemned for High Treason, in levying war against the Lord Protector and government, &c. at the general Gaol Delivery holden at the castle of Exeter the 18th of April, 1655.

On the first Indictment.

John Penruddock, of Compton Chamberlain in the county of Wilts, esq. challenged twenty eight of the persons impannelled for the petty jury. Found guilty by verdict of the petty jury.

Hugh Grove, of Chisseybury in the county of Wilts, gentleman. He also challenged the array. Found guilty by verdict of the petty jury.

Robert Duke of Stuckton, in the county of Southampton, gent. Found guilty by verdict of the petty jury.

Richard Rives of Rimpleton, in the county of Southampton, gent. Found guilty by verdict of the petty jury.

Francis Jones, late of Beddington in the county of Dorset, gent. Found guilty by verdict of the petty jury.

Thomas Fitz-James, late of Hanley in the county of Dorset, gent. Found guilty by verdict of the petty jury.

George Duke, late of Stuckton in Hampshire, gent. Found guilty by verdict of the petty jury.

Edward Davy, late of London, gent. Found guilty by verdict of the petty jury.

Thomas Poulton, late of Pewsey in Wiltshire, innholder. Found guilty by verdict of the petty jury.

Francis Bennet, late of Killington in Somersetshire, gent. Acquitted by the petty jury.

On the second Indictment.

Edward Willis, late of New Sarum in the county of Wilts, innholder. Found guilty by verdict of the petty jury.

Nicholas Mussel, late of Steeple Langford in the said county, yeoman. Found guilty by verdict of the petty jury.

William Jenkins, of Fordingbridge in Hamp-

shire, gent. Confessed the fact on his arraignment.

Thomas Helliard, of Upton in the county of Southampton, yeoman. Found guilty by verdict of the petty jury.

Robert Harris, late of Blanford in the county of Dorset, cordwainer. Found guilty by verdict of the petty jury.

John Biby, of Compton Chamberlain in the county of Wilts, gent. Found guilty by verdict of the petty jury.

John Cooke, of Potterne in Wilts. It appeared upon the evidence, that he was one of those, that took the judges. Found guilty by verdict of the petty jury.

John Haynes, trumpeter. Found guilty by verdict of the petty jury.

William Strode, of Wincanton in the county of Somerset, gent. Acquitted by verdict of the petty jury.

On the third Indictment.

Henry Collyer, late of Staple Langford in the county of Wilts, gent. Confessed the fact upon his arraignment.

William Wake, late of Blanford, in Dorsetshire, gent. Confessed the fact upon his arraignment.

Christopher Haviland, late of Longton in the county of Dorset, labourer. Confessed the fact upon his arraignment.

Hans Stiver, late of New Sarum, in the county of Wilts, gent. Found guilty by verdict of the petty jury.

James Horsington, alias Huish, late of New Sarum, gent. Found guilty by verdict of the petty jury.

John Giles, alias Hobbs, late of New Sarum, yeoman. Found guilty by verdict of the petty jury.

Abraham Wilson, late of the same, cutler. Found guilty by verdict of the petty jury.

Joseph Collier, late of Steeple Langford, gent. Confessed the fact upon his arraignment.

Richard Browne. Found guilty by verdict of the petty jury.

Nicholas Bradgate, late of Blanford Forum, yeoman. Acquitted by the petty jury.

Marcellus Rivers, late of Benstead in the county of Southampton, gent. The grand jury did not find the bill against him.

26 prisoners condemned.

3 acquitted.

1 ignominus by the grand jury, viz. Rivers.

199. Proceedings of the Lord Protector and his Council against Sir HENRY VANE, knt. for the Publication of a Book, intituled, "A Healing Question, propounded and resolved upon occasion of the late public and seasonable Call to Humiliation, in order to Love and Union amongst the honest Party." 8 CHARLES II. A. D. 1656.\*

The Copy of the SUMMONS for Henry Vane, Knight, his first appearance at Whitehall.

IN pursuance of an Order of his Highness and the Council, you are to attend the Council, on Thursday the 12th of August next, at 11 o'clock in the forenoon. Dated at Whitehall this 29th of July 1656.—Subscribed by

HENRY LAWRENCE President.

To Sir Henry Vane knight.

A true Copy of Sir Henry Vane's Answer sent to this Summons.

Belleaw, Aug. 4, 1656.

Sir; Lest my silence might be mis-interpreted upon the last paper, I have received, subscribed (as I suppose) with your hand, appointing my attendance at Whitehall the 12th instant: I have held myself obliged to return you this account, that my purpose is (God willin') to set forward from this place to my house in the Strand, the beginning of the next week, which is as soon as I can expect to have a coach to meet me half way, this very hot season for travel, and my own being in no condition to perform so long a journey upon so short a warning given to Your humble servant,

HEN. VANE

To Henry Lawrence, esq. President of the Council at Whitehall.

\* From a pamphlet, intituled,

"THE PROCEEDS OF THE PROTECTOR (SO CALLED) AND HIS COUNCIL,

"Against sir Henry Vane, knt. a late eminent Member of the Council of State of the Commonwealth of England: as touching his imprisonment in the Isle of Wight. Together with his Testimony delivered in writing to the said Protector, by way of a peculiar address to himself, and faithful advice of an old friend and acquaintance. Faithfully transcribed and attested out of the original copies, and published by a real well-wisher to Zion's Prosperity and England's Liberty."

"He that being often reprov'd, hardeneth his neck, shall suddenly be destroyed, and that without remedy." Prov. xxix. 1.

"For if I build again the things that I have destroyed, I make myself a transgressor." Gal. ii. 18.

The following Address was prefixed to the account:

"Reader; Thou hast here a true narrative of the whole proceedings against sir Henry

Sir Henry Vane's letter to Mr. Jessop, Clerk to the Council at Whitehall, presently after his coming to London.

Charing Cross house, Aug. 20, 1656.

Sir; It being declared by parliament (as is very well known) that it is against the laws and liberties of England, that any of the people thereto should be commanded by the king (when there was one, to attend him at his pleasure) but such as are bound thereunto by special service (which others therefore are not) it will I hope be permitted me without offence, to claim the same privilege and liberty in these times, and in the case of the summons sent me, wherein I find no cause for my appearance expressed but mere will and pleasure: Yet in vindication of the innocent, and peaceable deportment I live in according to the laws; I have not refused to be upon the place at my house here in the Strand ever since Thursday night last, as I made known unto you by this bearer the next morning. And as ever since I have been, so I am still ready to appear when I shall be sent for, until the pressingness of my occasions, in reference to my family concerns, which at this time by reason of my father's

Vane, knt. and his imprisonment in the Isle of Wight. Occasion being taken (as thou wilt find) from his writing and publishing a discourse intituled, "An Healing Question," &c. tending to the composure and uniting all honest men's hearts and spirits, who from the first beginning of all the war all along have been engaged in the cause of true freedom, against oppression and tyranny, unto which he was invited by the Declaration for a Solemn Fast, set forth by those in power, the 13th day of March, 1655, exciting the good people of England and Wales to wait upon the Lord for light and conviction, professing in the sight of God and man, a most willing mind readily to receive, when convincingly offered by any.

"This being in short the true state of the case, and falling providentially into my hands, out of duty to my country, and respect to that worthy patriot (who at this day so eminently suffers for the cause of God, and true freedom, and that from the hands of those he hath deserved better measure) I have exposed the whole to public view, that thereby thou mayest be informed of the truth, and the nation may know what is become of so considerable a member, who may deservedly be a pattern for all true Englishmen to imitate, in this apostatizing and back-sliding age."

debts are very great and heavy upon me, shall require my attendance upon them in other places of the nation. All which I held myself obliged to make known unto you in the relation you stand in, especially not having heard from you yesterday, as I suppose I might,

I am your servant,  
HEN. VANE.

For Mr. Jessop, Clerk to the  
Council at Whitehall.

The first Order of the Council concerning Sir Henry Vane here followeth.

Thursday Aug. 21, 1656. At the Council at Whitehall.

Sir Henry Vane having this day appeared before the Council, and they having taken consideration of a seditious book by him written and published, intituled 'A Healing Question' propounded and resolved, &c.' the same tending to the disturbance of the present government, and the peace of the Commonwealth. Ordered that if Sir Henry Vane shall not give good security in five thousand pound bond by Thursday next to do nothing to the prejudice of the present government, and the peace of the Commonwealth, he shall stand committed, and that orders be drawn up accordingly.

W. JESSOP Clerk of the Council.

Sir Henry Vane's Letter to Mr. Jessop upon the receipt of this Order of the Council.

Sir; It is a great quiet to my mind, and satisfaction to my conscience in the sight of God and man; to perceive at the first entrance into my sufferings, that the Witness owned by me, under the title of 'A Healing Question' (when I was at Whitehall 21 present) which asserts the principles, spirit, and justice of the cause we have professed and fought for in our late wars, is now thought fit by those that are in power to have the name given to it of seditious, especially considering that the healing nature, and great tendency, that clearly shineth forth throughout that discourse, to the uniting the whole party of honest men in the true public interest warranted by the laws of the land, and in array of safety against common danger, doth with its own evidence wipe off the blemish of that reproach, with the same breath that it is cast on.

Nay I can truly say, I am very well content to take this as a mark of honour from those that sent it, and as the recompence of former services, as knowing a better reward is laid up for me in his hands, through the wisdom of whose providence, this may be the means prepared to keep me unspotted, and undefiled from the evils of these backsliding times, unto the day of Christ's appearance, which shall be my joy, when my enemies shall be ashamed.

Nor can I but observe in this proceeding with me, how exactly those that have made this Order do in this (as in many other things at this day) tread in the steps of the late king, whose design being (as is express in the Remonstrance of the State of the Kingdom 15 Decem-

ber 1642,) to set the government free from all restraint of laws concerning our persons and estates, and to render the monarchy absolute, did think he could have no better means to effect it, than to cast into obloquy and disgrace, all those that desired to preserve the laws and liberties of the nation, and to maintain religion in the power of it, under the names of Puritans, factious and seditious persons, as well knowing that the light of their principles and practices, were like to stand most in the way of bringing to pass such an evil design.

And truly it is with no small grief, at this time to be lamented, that the evil, and wretched principles of the misgovernment, which the king then aimed to work out his design by, but could not effect, should now revive, and spring up so evidently in the hands of men professing godliness, to the great profaning and reproach of God's name, and arrived at maturity in practice, which former times abhorred to think of, and the designers themselves with all their policy and power could never reach.

This appearing but with too much evidence in my conscience, when the present governors held themselves obliged to call the people of these three nations unto a day of public humiliation, and to invite to the giving in of light and conviction, with a free and open profession of a ready subjection of mind thereunto, was a chief motive that induced me to prepare my witness, as I did, which being asked for from me by one of the Council, I delivered in writing, and it continued in their hands about a month's space, without any prohibition to print, and then was put to the press in the ordinary way of all other books, and had the usual warrant for the coming forth, and nothing laid to its charge ever since, till, for what reason of state I know not, it is now thought meet to be called seditious, and occasion is taken thereby to threaten me with bonds, unto which I say the will of the Lord be done; through whose supporting grace I am made not careful in this matter, and therefore have been willing, without any circumlocution or advantage I might have taken, to own with all readiness that witness for which the Lord hath given me a heart most freely to suffer whatsoever he shall call me unto, in the faithful discharge of a good conscience therein. And this being said, as is needful in my own vindication, my Answer to the Paper, that ordereth me to stand committed, unless I will give security by bond, &c. and so by my own voluntary act, do that which may blemish and render suspect my innocence, and the justice and good of the cause I suffer for; is this, That my purpose is, God willing, to give no such bond, but rather expose myself to the commitment mentioned; although I must ingeniously profess, I neither know, nor acknowledge the authority, which those that have made the Order, do exercise over me in this case: Nor do I conceive their Votes and Orders have a binding force by the laws of the nation. This is my Answer to the Paper I received from you, which I desire may be accordingly present.

ed to their view, that ordered my commitment ; my intentions being to make use of the little time of liberty, which is remaining to my own dispose, for the visiting of my near relations in Kent, where I shall be sure to be heard of, and however do propound to myself not above a week's stay, before my return again to my house in the Strand, so subscribes HENRY VANE.

A true Copy of the first Warrant.—To Edward Dendy, Esq. Serjeant at Arms attending the Council, or to his Deputies and every of them.

Whereas upon consideration of a seditious book written and published by sir Hen. Vane knight, intituled "An Healing Question propounded and resolved, &c." tending to the disturbance of the present government and the peace of the Common-wealth. It was ordered by his Highness and the Council on the 21st of August last, that if he should not give good security in 5,000*l.* bond by Tuesday then next coming, to do nothing to the prejudice of this present government, or of the peace of the Common-wealth, he should stand committed. And whereas he hath not given security according to the tenor of that Order, but refuseth to do the same. These are therefore to will and require you forthwith to apprehend, and take into your charge, the body of the said sir Henry Vane, and him to convey in safe custody to the Isle of Wight, and there to deliver him to the governor of that Island, or to his deputy, to be by him disposed of according to the Order of his Highness and the Council. Hereof you are not to fail: And for so doing this shall be your sufficient Warrant.—Given at White-hall this 4th day of September 1656.

Signed in the name and by order of  
his Highness and the Council.  
HENRY LAWRENCE, Pres.

A Copy of the Warrant to the Governor of the Isle of Wight or his Deputy.

Whereas upon consideration of a seditious book written and published by sir Henry Vane knight, intituled, "An Healing Question propounded and resolved, &c." tending to the disturbance of the present government and the peace of the Commonwealth. It was ordered by his Highness and the Council on the 21st of Aug. last that if he should not give good security in 5,000*l.* bond by Tuesday then next coming, to do nothing to the prejudice of the present government, or of peace of the Commonwealth, he should stand committed. And whereas he hath not given security according to the tenor of that Order, but refuses to do the same, these are therefore to will and require you, to receive into your charge from the bearer hereof, the body of the said sir Henry Vane, and him to secure, and keep in safe custody in such place within the Isle of Wight, under your command, as you shall judge most convenient, not suffering him to speak with any person during his abode there, but in the presence of some officer, and to continue him thus

under custody till you shall receive other order ; whereof you are not to fail. And for so doing this shall be your warrant. Signed in the name and by Order of his Highness and the Council,  
HEN. LAWRENCE, Pr.

Given at Whitehall this 4th day of Sept. 1656.

Here follows the TESTIMONY of Sir Henry Vane, delivered in writing by his own hands.

My Lord : Having something in my mind to speak by way of more peculiar address and concernment to your lordship than the rest of your company, I have chosen to do it by these lines, as the testimony which upon this occasion I desire to speak before your own conscience in the sight of God.

The Scripture saith, he that will save his life shall lose it, and he that will lose his life for Christ's sake and the gospel (in faithful witness bearing) shall save it ; this word of the Lord is in especial manner fulfilling amongst the Saints and people of God at this day, whom the Lord is bringing very eminently upon the stage of trial and sufferings, and that not only from open enemies, that sin in a declared profane spirit, but from equals and friends that have gone into the house of God in company, and taken sweet counsel together in all their concerns, but, yet come at last to hate their brethren, and cast them out under a pretence of zeal and glorifying God therein.

And to come a little nearer the case in hand, this great truth is hastening apace to be made good in those principles, that spirit, and course of action your lordship is sound in, and in those which the Lord enables me to own and profess, and is bringing me through his rich grace in some weak measure, to the practice of, which are to cleave to what is right and good, though power be on the other side to oppose it.

The message which in former times you sent me, is in my memory still, it was immediately after the Lord had appeared with you against duke Hamilton's army, when you bid a friend of mine, tell your brother Vane (for so you then thought fit to call me) that you were as much unsatisfied with his passive and suffering principles, as he was with your active ; and indeed I must crave leave to make you this reply at this time, that I am as little satisfied with your active, and self-establishing principles, in the lively colours wherein daily they shew themselves, as you are or can be with my passive ones, and am willing in this to join issue with you, and to beg of the Lord to judge between us and to give the decision according to truth and righteousness.

And having named truth and righteousness, surely it may but too truly be said, that amongst us remains nothing but the name, the power and life thereof seems to be ceased from our land, and is banished from the societies of most men ; yet my lord, it is that whereby the actions and practice of all men are to be ruled, as well of governors as of the governed. Governors themselves are neither to be, nor make



themselves more than what in truth and righteousness they are and ought to be: when they swerve from this rule, they become sinners, and must look by transgression to fall, as well as the lowest of the people.

That which in truth of fact you were, is visible enough to every eye, that is to say, under the legislative authority of the people represented in parliament, duly chosen and rightly constituted: you and the force under your command are the nation's strength, and formed military power, kept up by a derived authority from them, at a settled pay to be employed for the nation's use and service, and theirs only, and over this military body you are by them placed as the head.

This then is the power, which duly and properly you are, and more than this, I am not satisfied in my conscience is in truth and righteousness, appertaining unto you; to use this power lawfully, is your honour, your duty, your safety, as well as their welfare and preservation, for whom it was raised, and is still paid. To use this unlawfully, as evidently you do, when you go about to assume and establish to yourself the power of your head, and at best will but allow them but to share with you in their known right to the legislative authority, unto you, whom yourself and the army under your command acknowledged the whole to be due, when as a scale set to this their authority, they caused justice to be done upon the late king; you then become like that one sinner, which Eccles. 9, 19, is said to destroy much good, and do forget that wisdom which teaches and restrains from such unlawful use of force and strength, is better than weapons of war managed never so successfully in a way of destroying that which is right and good, whatever worldly gain and advantage in other respects to be obtained thereby.

And although your own conscience cannot but consent to the truth of what is here told you, in the name and fear of the Lord, yet being strong and trusting to the power of your sword, which is flesh and not spirit, is man and not God, your heart is lifted up, if you speedily repent not, unto your destruction; for you are not able to bear the reproofs of the Lord, nor the faithful witness and advice of his saints and people that in love and true friendship dissuade you from going on in this way, as foreseeing and foretelling your ruin and destruction therein: And the fears they have, that you will not ruin alone, forasmuch as their outward safety and welfare is so very far included in yours.

Nor doth the witness of the saints which they bear against you rest here; but it is too evident to those of them, that have a spirit of discerning, that in reference as well to Christ your heavenly head, as to the good people of this nation in parliament assembled, and rightly constituted, who were, and ought to be your earthly head: you lift up your heel, and harden yourself every day more than other, in a fixed resolution not to become subject, as is your

duty, nor to hold and keep yourself in your due station allotted to you in the body: but are aiming at the throne in spirituals, as well as temporals; and to set up yourself in a capacity, of not holding your head either in the one consideration or the other.

And if this evil be in you at the bottom, he assured the Lord will speedily lay it open as before the sun, and none of the webs you are weaving will prove garments to cover your nakedness; neither will your agreements or covenants with death stand; even those politic contrivances and conjunctions with those that are the enemies, whether open or secret, against the spirit of life, and the workings and manifestations thereof, in the suffering saints and anointed ones of the Lord Jesus, whom the Lord is about to own for his wisdom in the midst of the earth, unto which excellent spirit that shall be found in those holy ones of the Lord, not only this nation's wisdom in their very supreme assembly, but the ruling powers of the whole world shall yield subjection, and think it their glory to become subservient to the bringing forth of the new heavens and that new earth, wherein dwells righteousness and truth; this is the foundation stone, elect and precious, which through faith is seen to be laid already in our Zion at this day, which those that believe, and make not haste, shall arrive to the experience of, and shall discern that this stone is in cutting out amongst us without hands, to its becoming a great mountain, and filling the whole earth.

Take then in good part before it be too late, this faithful warning and following advice of an ancient friend, but is now thought fit to be used and dealt with as an enemy.

Break off timely your sins by repentance, do judgment, execute justice, and walk humbly before the Lord; yea, rent your hearts and not your garments, for those are the fasts the Lord hath chosen, break every yoke, and let the oppressed go free; in one word, proceed no further in lifting up yourself against the Lord of heaven, but instead of causing the vessels of his house, even his most precious saints to be brought before you, as you do daily, for to exercise public scorn and triumph over them, see that your true interest lies with them and in them, as well now as heretofore, and endeavour to recover their hearts to you, and their prayers for you, lest your God in whose hands your breath is, and whose are all your ways, whom you have not cared to glorify as you ought, should arise suddenly and tear you in pieces, by the immediate stroke of his own vengeance, and there be none to deliver, even such of you who live in pleasure on the earth, and have been wanton, and nourished yourselves as in a day of slaughter, who have condemned, and in your hearts killed the just One, and he doth not resist you: But behold the Judge standeth at the door.

Ludlow, in addition to the passage extracted in the Note to Streater's Case, *ante*, p. 365, says of this matter :

"Sir Henry Vane, according to his promise, being come to his house near Charing-cross, the Council sent a messenger thither to require him to attend them; which he did; and was there charged by Cromwell with disaffection to the government, which he had demonstrated by a late writing published by him, with a seditious intention. The paper was called, "A healing Question proposed and resolved;" and contained the state of our controversy with the king, the present deviation from that cause for which we engaged, and the means to unite all parties in attaining the accomplishment of it. It was written upon an invitation given in a Declaration published by Cromwell for a General Fast, wherein it was desired, that the people would apply themselves to the Lord to discover that Achan which had so long obstructed the settlement of these distracted nations. When it was finished, he shewed it to lieutenant general Fleetwood; who, seeming to approve it, desired to take it with him, and promised to communicate it to Cromwell, upon the first opportunity that should be offered. Sir Henry did not disown either his dissatisfaction with the present state of affairs, or the publication of the discourse before mentioned. So that Cromwell thought fit to require him, by a day limited, to give security not to act against him. Which time being expired, he appeared again before the Council; and delivered into Cromwell's own hand another paper, containing the reasons of his disapproving the present usurpation, and a friendly advice to him to return to his duty, with some justification of his own conduct with relation to the public. But notwithstanding all this, and divers reasons alleged by him to excuse himself from giving the demanded security, he was sent prisoner to Carisbrook castle in the Isle of Wight."

"Sir Henry Vane being still a prisoner in Carisbrook castle, an order was sent thither from the Council to bring him from thence, and to permit him to enjoy his liberty, which was done; and he arrived at London in a short time after; where he met with another kind of persecution: for Cromwell perceiving that the former method had proved unsuccessful, privately encouraged some of the army to take possession of certain forest-walks belonging to sir Henry Vane near the castle of Raby; and also gave order to the Attorney-General, on pretence of a flaw in his title to a great part of his estate, to present a bill against him in the exchequer. This was designed to oblige him to expose his title; which if they could get done, they doubted not, by the craft of the

lawyers, to find some defect in it, whereby it was hoped he would be forced into a compliance: yet at the same time he was privately informed, that he should be freed from this, or any other inquisition, and that he should have whatsoever else he would desire, in case he would comply with the present authority."

In the 5th volume of Thurloe's State Papers, is the following letter from Vane to Jessop:

Sir H. Vane to Mr. William Jessop.

"Sir; It being declared by parliament, as is very well known, that it is against the laws and liberties of England, that any of the people thereof should be commanded by the king, when there was one, to attend him at his pleasure, but such as are bound thefeunto by especial services, which others therefore are not, it will, I hope, be permitted me without offence to claim the same privilege and liberty in these times, and in the case of the summons lately sent unto me, wherein I find no cause for my appearance, but mere will and pleasure; yet in vindication of the innocent and peaceable deportment I live in, according to the laws, I have not refused to be upon the place at my house here in the Strand ever since Thursday night last, as I made known unto you by this bearer the next morning; and as ever since I have been, so I am still ready to appear, when I shall be sent for, until the pressingness of my occasions in reference to my family concerns, (which at this time, by reason of my father's debts, are very great and heavy upon me) shall require my attendance upon them in other places of the nation: all which I have held myself obliged to make known unto you in the relation you stand in, especially not having heard from you yesterday, as I supposed I should. I am your humble servant,

Charing-cross house, the 20th H. VANE."

of August, 1656.

"For Mr. Wm. Jessop, Clerk to Council at Whitehall."

Thurloe writing to Henry Cromwell, under date August 26, 1656, says:

"Sir Henry Vane was before the Council upon Thursday last, where he was charged with writing the book called "The Healing Question," which strikes at the foundation of this government, and offers another to the people: he owned the writing of it, as also the publishing, though in terms dark and mysterious enough (as his manner is:) he was hereupon ordered to give in security not to disturb the peace of the nation, or else to stand committed, and he was to do it by this day. I hear he will not give in security."

See the Trial of Vane for High Treason, A. D. 1662, *infra*.

200. Proceedings in the House of Commons against JAMES NAYLER, for Blasphemy, and other Misdemeanors: 8 CHARLES II.\* A. D. 1656. [Commons' Journals. 6 Harleian Miscellany, p 399.]

December 5, 1656

MR. BAMFIELD reported from the Committee, to whom the Information about James Nayler and others, was referred, the state of the Matters of Fact, and the Votes of that Committee as follows

First, I shall give you the short history of his life, as the Committee had it from his own

\* Neal's account of this transaction, is as follows

"The most extravagant Quaker that appeared at this time was James Nayler, formerly an officer in major general Lambert's troop in Scotland, a man of good natural parts, and an admired speaker among these people, some of whom had such a veneration for him, that they stiled him in blasphemous language, the 'everlasting Son of Righteousness, the Prince of Peace, the only begotten Son of God, the Fairest among ten thousand' Some of the friends kissed his feet in the prison at Exeter, and after his release went before him into the city of Bristol, after the manner of our Saviour's entrance into Jerusalem. One walked bareheaded, another of the women led his horse, others spread their scarves and handkerchiefs before him in the way, crying continually as they went on, 'Holy, Holy, Holy, is the Lord God of Hosts, Hosanna in the Highest, Holy, Holy, is the Lord God of Israel' Upon this the magistrates of Bristol caused him to be apprehended, and sent up to the parliament, who appointed a committee to examine witnesses against him, upon a charge of blasphemy, 1 For admitting religious worship to be paid to him And 2 For assuming the names and incommunicable titles and attributes of our blessed Saviour, as the name Jesus, 'the Fairest among ten thousand, the only begotten Son of God, the Prophet of the most High, the King of Israel, the everlasting Son of Righteousness, the Prince of Peace' All which he confessed, but alledged in his own defence, that these honours were not paid to him, but to Christ who dwelt in him

"The Committee asked him, Why he came in so extraordinary a manner into Bristol? To which he replied, that 'he might not refuse any honours which others who were moved by the Lord gave him' Being further asked, Whether he had reproved the persons who gave him those titles and attributes? He answered, 'If they had it from the Lord, what had I to do to reprove them? If the Father has moved them to give these honours to Christ, I may not deny them, if they have given them to any other but to Christ I disown them.' He concluded his defence thus;

VOL. V.

mouth He saith he was born in the parish of Ardsloe, near Wakefield in Yorkshire, where he lived 22 or 23 years, till he was married, according to the world, as he expressed it. Then he removed into the parish of Wakefield, where he continued till the last wars began, during which time he was under several commands,

'I do abhor that any honours due to God should be given to me as I am a creature; but it pleased the Lord to set me up as a sign of the coming of the righteous One, and what has been done to me passing through the town, I was commanded by the power of the Lord to suffer to be done to the outward man, as a sign, but I abhor any honour as a creature'

Neal then relates the appearance of Nayler before the House, and the Sentence there passed upon him After which he proceeds thus:

"December 18 James Nayler stood in the pillory in the Palace-yard, Westminster, and was whipped to the Old Exchange, the remainder of his Sentence being respited for a week, in which time the Reverend Mr. Caryl, Manton, Nye, Griffith, and Reynolds, went to him, in order to bring him to some acknowledgment of his crime, but not being able to reclaim him, the remainder of his Sentence was executed December 27, when some of his followers licked his wounds, and paid him other honours both ridiculous and superstitious He was afterwards sent to Bristol, and whipped from the middle of Thomas street, over the Bridge to the middle of Broad-street From Bristol he was brought back to Bidewell, London, where he continued sullen for three days, and would not work, but then begged for victuals, and was content to labour.

"At length, after two years imprisonment, he recanted his errors so far as to acknowledge, That the honours he received at his entrance into Bristol were wrong, 'and all those ranting, wild spirits which gathered about me,' says he, 'at that time of darkness, with all their wild acts, and wicked works against the honour of God, and his pure spirit and people, I renounce. And whereas I gave advantage, through want of judgment, to that evil spirit, I take shame to myself' After the Protector's death, James Nayler was released out of prison, and writ several things in defence of the Quakers, who owned him as a friend, notwithstanding his extravagant behaviour; but he did not long survive his enlargement, for retiring into Huntingdonshire, he died there towards the latter end of the year 1660, about the 44th year of his age. Mr. Whitelocke observes very justly, That many thought he was too furiously prosecuted by some rigid men."

, F.

and at last was quarter master in major general Lambert's troop; in which service he continued till disabled by sickness in Scotland, and so retired to his own home: about which time he was a member of an independent church at Horbery in Yorkshire, of which church Mr. Christopher Marshall was pastor; and by the same church, since cast out, as himself confesseth he hath heard; by which church he was charged as guilty of blasphemy and uncivil and wanton carriage with one Mrs. Roper a married woman, as that she should sit on his knee, and kiss him before divers other persons; and that it was his opinion, he might lie with any woman that was of his judgment. And then after some time went to visit the Quakers in Corwall, and by his way was by major Saunders committed to the common gaol in Exon, as a vagrant. And thence he and his company being delivered by an order from the Council, they travelling to Bristol, in the way Nayler took upon him, as was alleged against him. And as he passed through Chewstoke in the county of Somerset, towards Bristol, it is informed upon oath certified by three justices to the committee, That staying in that town one night, he was there in a chamber with three women of his company, leaning upon the bed with one of them at night when the servant of the house left them: and in the morning the servant found Nayler on the bed with one of the women, and the curtains drawn; and some of the company wished the servant to make no noise to awake them\*.

\* It seems likely, that Hume had not looked into this report of Nayler's case. He does not refer to it, or mention it. Some of the circumstances related in the text, would have enabled him to enrich the sneering account which he gives of the enthusiasts of the time. He notices this case at the conclusion of his mention of the Quakers.

"Baptism and the Lord's Supper, by all other sects believed to be interwoven with the very vitals of Christianity, were disdainfully rejected by them. The very sabbath they profaned. The holiness of churches they derided; and would give to these sacred edifices, no other appellation than that of shops or steeple-houses. No priests were admitted in their sect. Every one had received from immediate illumination, a character much superior to the sacerdotal. When they met for divine worship, each rose up in his place, and delivered the extemporary inspirations of the spirit: Women also were admitted to teach the brethren, and were considered as proper vehicles to convey the dictates of the Holy Ghost. Sometimes a great many preachers were moved to speak at once: Sometimes a total silence prevailed in their congregations.

"Some quakers attempted to fast forty days in imitation of Christ; and one of them bravely perished in the experiment. A female Quaker came naked into the church where the Protector sat; being moved by the spirit, as she

The way taken in this Report will be, first, To give you the Articles charged against him.

Secondly, The evidence, wherein there will be a little mention of the examinations and informations upon oath taken at Bristol; against which because there lies a seeming Objection I shall first clear that upon the matter of fact.

The Objection was, That they were not read again to the parties, as is usual in such cases.

Answer. That two witnesses, both of more than ordinary good repute, in that place were both put, and took characters of the questions and answers there; and comparing their notes did both of them publicly avow to the committee, as that which they were ready to depose, That every material passage was read unto the parties once or twice after they writ it down; and that they were the same which were offered to the committee, attested under the mayor of Bristol's hand to every of the said examinations and informations, and the city seal annexed to the whole. And besides, there is nothing in the said examinations and informations taken there but what is generally more clearly made out upon their examinations before the committee.

said, to appear as a sign to the people. A number of them fancied, that the renovation of all things had commenced, and that cloaths were to be rejected together with other superfluities. The sufferings, which followed the practice of this doctrine, were a species of persecution not well calculated for promoting it.

"James Nayler was a Quaker, noted for blasphemy, or rather madness, in the time of the Protectorship. He fancied that he himself was transformed into Christ, and was become the real Saviour of the world; and in consequence of this frenzy, he endeavoured to imitate many actions of our Saviour related in the evangelists. As he bore a resemblance to the common pictures of Christ; he allowed his beard to grow in a like form: He pretended to raise a person from the dead: He entered Bristol, mounted on a horse; I suppose, from the difficulty in that place of finding an ass: His disciples spread their garments before him, and cried, 'Hosanna to the Highest; Holy, Holy is the Lord God of Sabaoth.' When carried before the magistrates, he would give no other answer to all questions, than, 'Thou hast said it.' What is remarkable, the parliament thought that the matter deserved their attention. About ten days they spent in enquiries and debates about him. They condemned him to be pilloried, whipt, burned in the face, and to have his tongue bored through with a red hot iron. All these severities he bore with the usual patience. So far his delusion supported him. But the sequel spoiled all. He was sent to Bridewell, confined to hard labour, fed on bread and water, debarred from all his disciples, male and female. His illusions dissipated; and after some time, he was contented to come out an ordinary man, and return to his ordinary occupations."

Other evidence will be from Nayler's examination, wherein is most of this whole matter, which was taken in characters by five of the committee, who were appointed to, and did compare their notes.

Thirdly, The Opinion of the Committee.

The whole fact will fall under one of these two Articles.

First, James Nayler did assume the gesture, words, honour, worship, and miracles of our blessed Saviour. Secondly, The names and incommunicable attributes and titles of our blessed Saviour.

As to part of the first Article, that James Nayler riding through a town in Somerset, his company spread their garments and sang, Holy, Holy, before him; and also sang the like at his entrance into Bristol, one going bare-headed before his horse:

The Evidence was, That *Dorcas Erbury*, in her examination before the Committee in the Painted Chamber, confessed, that she did spread garments before him. And *Martha Simmons* in her examination at the same time, saith, that those garments that she did spread she spread in obedience to the Lord. And *Hannah Stranger* being then also examined, said, she threw two handkerchiefs before him, which she did, because he that is Lord of all commanded her so to do. And

*John Stranger* confesseth, That he saw others spread garments before him in the way from Exon to Bristol. And

*James Nayler* himself confesseth (upon the question whether garments were spread before him?) That some clothes were cast down, and afterwards, that some gloves and other things.

The evidence for singing Holy, Holy, was thus:

*Dorcas Erbury* in her examination at Bristol, being then asked, Why she passed along singing? said, She did not do it; but they that did it were commanded to do it: and the Lord hath made it manifest that they were moved of the Lord to do it. And being asked to whom they sang? and whom they called the Holy One of Israel? she said, Him that rode upon the horse; and she would maintain it with her blood. And being examined by the Committee as to this part of the examination, and advised to deny, if it were false; yet did not deny it though she did some other part of that examination.

*Martha Simmons* being examined in the Painted Chamber, whether she did sing the words, Holy, Holy, before the said James Nayler? answered, It is my life to praise the Lord, whether he be before me, or from me; it is my life to praise the Lord. And being asked, Whether she heard any person sing Holy, Holy, before the said James Nayler? she answered, it is our life to praise the Lord.

*Hannah Stranger* being examined in the Painted Chamber, whether she sang the words, Holy, Holy? answered; she could not well remember the words; but if she did not sing Holy,

Holy, she witnesseth the Holy of Holies was risen, which moved her so to do; but said further, she did not stand there to accuse herself.

*James Nayler* being examined by the committee, whether any sang Holy, Holy, before him as he rode? answered, There were praises sung to the Lord. And being asked, Whether those words, Holy, Holy, were sung? answered, That he heard those words. And being asked as to the singing before him when he rode into Bristol, answered, That there was a psalm sung, such a one as the Lord was pleased to give into the hearts of them that sang. And being asked as to the words of the psalm, whether they were not Holy, Holy? said, It may be it was; very like it might be so.

And in his Examination at Bristol, being asked why he came in there in such an unusual manner, two women leading his horse, and singing, with one bare before him? said, It was for the praises of his Father; and that he may not refuse any thing that is moved of the Lord; and that he did think the Father did command them to do it. And being then asked, whom they meant by the word Holy that they sang? he answered, That they that sang were all of age to answer for themselves.

And this speaks something for the proving of another part of the first Article, vindicating one going bare-headed before him, and women leading his horse, which is more fully proved by the informations upon oath of George Witherly and Richard Hart, taken at Bristol, before the mayor there, and certified as aforesaid; and upon the confession of one Thomas Woodcock before the said mayor, who went bare-headed before James Nayler, and said he was moved by the spirit so to do. And James Nayler himself, upon his examination by the Committee, when he was asked, whether any went bare-headed before him as he went into Bristol? answered, he did not know, he took little notice of it, but heard some say it was so. And being asked, whether any woman led his horse? answered, there was a woman took hold of the bridle of the horse.

#### *Resolution of the Committee upon this whole Evidence.*

The Committee were of opinion, that the first Article was proved.

One thing also, being part of the matter of fact, we think worthy your knowledge, though much stress will not be laid on it; and that is, That the description of our Saviour by Publius Lentulus to the Senate of Rome in writing (which is also imprinted), was taken upon one of James Nayler's attendants, which is also certified by the said mayor. And for Nayler's hair, both colour and manner of wearing it, as also the fashion of his beard, and feature, and person, did much agree with that description; which also was taken notice of by many of the Committee, how much he resembled (as they apprehended with some affectation) the picture usually drawn for our Saviour.

That in divers answers he imitated our Saviour Jesus Christ, using the same expressions

that he did; in one place he saith, That he lived some weeks, fifteen or sixteen days, without any food or other sustenance; and being asked, wherewithal God fed him, if not with food? answered, 'Man liveth not by bread alone, but by every word which proceedeth out of the mouth of the Lord.'

I shall here mention one remarkable one in his examination at Bristol: his expression was, If they had known the Father, they should know him also. And Nayler being examined by the Committee to this, Whether that were his answer at Bristol? he answered in these words: Truly I can say little of that, whether I did say it or no; but if I did say it there, it is true; for if any one do know the Father, they shall know what I am, and where I live; and none can know my life further than they know the Father; for the Father is my life: none can know my life, but they that know my Father; for he is my life. This I particularly mention, being commanded by the Committee, who resolved, That this whole Answer of James Nayler be reported to the house.

Another part of this Article was, That he received the outward worship of being kneeled unto, and having his feet kissed. And for this the Evidence was:

*Martha Simmons*, in her examination at Bristol, said, She ought to worship him, but here denied.

And further the Evidence went, That after his Imprisonment at Bristol, it appeared by the information upon oath at Bristol, to wit, of *Thomas Perkins*, and *Thomas Cole*:

*Thomas Perkins* informeth, That *Dorcas Erbury* fell down at Nayler's feet, and kissed his feet; and the same evening one *Alice Brook* fell on her knees before the said Nayler, and Nayler put his hands upon her head, and said, Stand fast, &c.

*Thomas Cole* informeth, That the 25th of October, *Martha Simmons* and *Hannah Stranger* being called out of Nayler's room into their own lodging, they one after another kneeled before Nayler, and laid their heads on his knees; and he laid his hands on their heads, making a groaning noise within himself; and before they rose from his knees, he crossed his hands over their heads. And *Hannah Stranger* at her examination before the Committee, confessed, That she kneeled at James Nayler's feet, and kissed them. And others being demanded concerning these actions, would give no answer. And

*James Nayler* being examined, whether any kneeled and kissed his feet, answered, That there might be such things, though he did not mind it, being things that he did not glory in.

As for his doing of miracles particularly, *Dorcas Erbury* saith, That she was dead in Exeter gaol two days, and that Nayler laid his hands upon her, and raised her; which she affirmed in her examination at Bristol, and did not deny when examined as to this by the Committee.

To which *Nayler* being examined whether *Dorcas Erbury* was dead in Exon gaol, as in

her examination, answered, If you speak of such a death as you may understand, she was dead. Being further asked, How she was dead, in his understanding? answered, I shall say little of myself in that thing. And being further asked, whether he raised her from the dead? answered, I can do nothing of myself. Being asked, whether any other did raise her by his hands, and if he laid his hands upon her? answered, There is a power in me from above. And being demanded, whether he had such a power as to raise from the dead? answered, I have said before I cannot bear witness of myself in the thing. And being asked, who bore witness of him? answered, The Scriptures do bear witness to the power which is in me, which is everlasting. And being demanded whether he raised from the dead by virtue of that power? answered, I can do nothing but what the power doth in me: and it is the same power whereof you read in the Scriptures, that hath raised the dead, according to the measure of the power manifest.

And being asked, whether that power were manifest in such a manner in him as to raise *Dorcas Erbury*, from the dead? answered, I have said; I shall not satisfy in words concerning the thing further than only this, that you may clearly understand that wherein *Dorcas Erbury*, or any else do attribute unto me, as to a creature that hath beginning and ending, that I utterly deny; but that that any see of God in me, by the same spirit that revealed any thing to them, that I do not deny. This may serve at one word; for there cannot be a more abominable thing than to take from the Creator, and give to the creature: The same power which did raise from the dead, which you read in the Scripture, the same Christ, the same anointing according to the measure of him, is manifest in me, and no other. And being asked, if any prayed to Christ in him, whether he did disown it? answered, As a creature I do disown it.

These things and divers others we have reported as part of the matter of fact.

Second Article: That the said James Nayler assumed the name, and the incommunicable attributes and titles of our blessed Saviour: as first,

"The Fairest of Ten Thousand."

As for this, the evidence was in a letter of *Hannah Stranger*, found about him at Bristol, she giving him the title of the Fairest of Ten Thousand: which upon her examination at Bristol and before the Committee, she confessed she wrote to him in her letter. And James Nayler being asked by the Committee, whether any such title as the Fairest of Ten Thousand had been given to him in any writing or letter? he answered, To what they did in the letter, if they gave it to me as to the visible, then I do deny it; but if they speak it to that begotten of the Father in me, then I dare not deny it. And being willing to repeat that answer again, he said, If they speak it as to the visible, as to that

which is earthly, then I deny any such thing belonging to me in that sense: but if they speak it to that which the Father hath begotten in me, then I dare not deny it; because that, as he said, is beautiful, where-ever it is begotten. And in his second examination before the Committee, his answer was to the same effect.

*Resolution of the Committee.*

Upon this Evidence the Committee were of opinion, That James Nayler had assumed the Title of 'the Fairest of Ten Thousand.'

"The Only-begotten Son of God."

And for that the evidence was, That Hannah Stranger in the said letter gave him that title: and being demanded whether he did assume that title, answered in these words; That there are many sons besides, yet the Son of God I must witness, and dare not deny. The Son of God I am, and dare not deny. And being often pressed to give a direct answer, whether he were the only-begotten Son of God? answered thus: I am the Son of God, but I have many brethren; and again said, I have many brethren, though some of them do not yet know me. And being urged to confess or deny it, answered in these words: I have answered, That I have given of my Father to speak for the present unto that thing. Being asked, whether he were the only-begotten Son of God? he answered, Thou hast said it. Which question and answer being repeated to him as his answer, he answered, Do not ensnare the innocent. And upon his examination taken, certified and attested, as aforesaid, being asked, whether he be the only-begotten Son of God? answered, That he was the Son of God; and that the Son of God was but one.

But being examined by the Committee as to this part of his examination at Bristol, he affirmed, That this was not his answer.

*Resolution of the Committee.*

Upon this Evidence the Committee were of opinion, That the title of the only-begotten Son of God was given to James Nayler. And being demanded whether he assumed that title, he did not deny it.

"The Prophet of the Most High."

This title we find given him in a letter to Nayler from one Jane Woodcock, found about him at Bristol. And being examined there upon that clause in the letter, he answered, That he was the Prophet of the most high God.

And *Martha Simmons*, upon her examination at Bristol, said, There was a time when James Nayler was a true Prophet of the most high God, but now he is gone beyond, and is in the administration of peace, and is the beloved of the Lord.

*James Nayler* being examined by the Committee, whether he owned this title of The Prophet of the most high God? he answered, Yea, I am a Prophet of the most high God. And being pressed to answer whether he were the

Prophet, he answered, There be other Prophets besides me. And being pressed again with the same question, answered, I have said what I may, as to that thing in the counsel of my Father.

Upon this his Confession at Bristol, and Answer as aforesaid,

*Resolution of the Committee.*

The Committee were of opinion, That James Nayler had assumed the title of the Prophet of the most high God.

"The King of Israel."

And for this the Evidence was, We find in a letter from one Thomas Simmons this title given to James Nayler; and in the examination of Dorcas Erbury, taken at Bristol aforesaid, we find something to this purpose; who being asked why she pulled off his stockings, she answered, Because he is the Holy One of Israel, and deserves and is worthy of it.

And *Martha Simmons*, upon her examination at Bristol, saith, That James Nayler's name is now buried, and that he is anointed King of Israel. To which being examined by the Committee, expressly owned the examination as to that to be true, and the thing itself: but because this varies a little from the Charge, and fastens it not altogether upon James Nayler, they had this further proof: James Nayler, in his examination at Bristol, being asked whether he were the King of Israel? answered, Thou hast said. To this James Nayler, being examined by the Committee, whether this question were so demanded as aforesaid? he answered, That it was not asked by way of a question, whether he were the King of Israel, but that the examiner did positively affirm, Thou art the King of Israel; to which he answered, Thou hast said it. And being particularly examined by the Committee, whether he did own the title of the King of Israel? he answered in these words, I have no kingdom in this world, yet a kingdom I have; and he that hath redeemed me, hath redeemed me to be a king for ever. And being examined again to the same question, whether he owned the title of the King of Israel? he answered As a creature, I deny any such thing, further, than as God manifested in the flesh: And if they gave that title to Christ in me, then I do own it.

*Resolution of the Committee.*

Upon this Evidence the Committee were of opinion, That James Nayler assumed the title of the king of Israel.

"The Everlasting Son of Righteousness."

This we find given to him in a letter by Hannah Stranger in these words, Thou Everlasting Son of Righteousness. And *Martha Simmons*, in her examination at Bristol, calls him Lord of Righteousness; which she also affirmed before the Committee. And James Nayler himself being examined by the Committee, whether any person had given him that

title of the Everlasting Son of Righteousness? He answered, where God is manifested in the flesh, there is the Everlasting Son of Righteousness. And being asked twice, whether God was manifested in the flesh in him? Answered both times, God manifest in the flesh I witness, and may not deny.

*"Prince of Peace."*

This we find given him in a letter by the said Hannah Stranger; and in her examination at Bristol she owned him to be the Prince of Peace. The same title was also given him by Martha Simmons, as it appeared by her examination at Bristol, which was confessed by her, before the Committee. And being particularly asked, what she called the man whom we call James Nayler? Answered, I call him a perfect man. And being further demanded, whether she did not call him the Prince of Peace? Answered, He that is a perfect man, he is the Prince of Peace. And Nayler being examined by the Committee, whether he owned the title of Prince of Peace? answered, The Prince of Peace I own, the everlasting Peace is begotten in me.

*"Sent to judge and try the cause of Israel."*

The evidence of this was, in the same letter of Jane Woodcock's we find it given to him; and in his examination at Bristol, whether that title was given to him, he would make no answer. And being examined by the Committee, whether he assumed to judge and try the cause of Israel? Answered in these words: The judge of Israel is but one, and that judge I witness in me, which is the Christ: And further answered, If thou speak of him whom the Father hath sent into the world and begotten in me, the Holy Ghost, the spirit of the Father, and the Son in me, which is in me; if thou speak of it, this I own. And being asked, in what respect he was sent? He answered, no otherwise but as God manifest in the flesh, though not as mortal. And being asked, by whom he was sent to try the cause of Israel? Answered, By him who hath made all creatures, and hath sent his spirit into me, his Son into me to try the cause; though he said he was no judge in carnal matters. And being asked whether he were more sent to judge and try the cause of Israel, than another? Answered in these words; As to my saying I am sent; mind, that no otherwise than as the Father, and the Son is in me: and to that I say further, that no other man is sent in that sense but he that knoweth the indwelling of that God, and according to the measure of his knowledge of the living God, so far is judgment committed to him, and no further.

And being urged to answer, whether any other had the same measure of judgment, to judge the cause of Israel, as he had? He answered, That he had not at present any thing given him of his Father to answer unto that.

*Resolution of the Committee.*

That James Nayler hath assumed to be sent to judge and try the cause of Israel.

*"JESUS."*

And for this the Evidence was,

John Stranger, in a postscript in his wife's letter directed to, and found upon James Nayler, used these words: Thy name is no more to be called James, but Jesus. Which postscript being shewed to Stranger by the Committee, he owned it written by him: and being asked, wherefore he called him Jesus? answered in these words: I was moved of the Lord, and afterwards by the spirit of the Lord. And being asked whether by Jesus he meant the Saviour of the world? He would give no answer. And Martha Simmons in her examination at Bristol saith, that she hath heard some call him Jesus; which examination being read unto her, she denied not that, though she denied another part of that examination. And James Nayler being examined, whether any person had called him by the name of Jesus? answered in these words: As I am visible here before you, I believe they have not; but that the name of the Lord is in me, that I dare not deny: and further said, that they have given that name to him who is the Jesus, but if they have given it to any other than to the Son of God that is in me, I do deny what they have spoken. And being asked, whether he denied that they gave him the name of Jesus? Answered, As I am a creature, I believe they did not: And afterwards confessed that the name of Jesus was given him in a letter; and if he had understood it of any other than the Jesus, he should have denied it. Being demanded, whether they gave the name of Jesus to him? He answered in these words: No otherwise than as to the Son of God. Being demanded, whether any had given him the name of Jesus? answered, Not as to the visible. And being demanded, to what then they gave the name of Jesus? Answered in these words: I understand they gave that name to the Jesus, to the Christ that is in me.

Upon his second Examination, being asked whether he owned the name of Jesus; and if that title belonged to him, as to Christ within? He answered, That name was never published to be called by me, neither do I call myself by that name; but what my Father hath published, is another thing.

*Resolution of the Committee.*

Upon this evidence the Committee were of opinion that James Nayler assumed the name of Jesus.

*"He in whom the Hope of Israel standeth."*

And for this, the evidence was in the letter of Martha Simmons, found upon James Nayler, where were these words, Thou well-beloved Lamb of God, in whom the hope of Israel



stands. And James Nayler, in his examination at Bristol, being asked, whether he were the Lamb of God in whom the hope of Israel stands? answered, That if I were not his Lamb, I should not be so sought to be devoured; and that the true hope of Israel stands in the righteousness of the Father, in whomsoever it is. And being asked, whether Israel's hope were in any measure in him? he answered, Yea. Which examination of his at Bristol being read to him by the Committee, he denied not this part of it. And being examined by the Committee whether their hope of Israel did stand in him? answered in these words, It stands only in Christ Jesus, and as Christ Jesus is known in me. And being asked again, whether he were he in whom the hope of Israel stands? answered in these words, No way but as Christ is in me. And being then asked, Whether as Christ is in you, so are you he in whom the hope of Israel stands? answered, Nay, do not add to my words; I speak as plain as I can, that all the glory may be given to God, and none to the creature; that the whole glory may be given to my Father, and none to me, as you look upon me as a creature. And the next question was, Whether as Christ is in you, are you he in whom the hope of Israel stands? To which he answered, Christ in me, the hope of glory. And being examined, what hopes Israel had in him beyond any other person? answered, None can know, but they that are of Israel: They can give an account of their hopes; Israel must give an account of their hopes themselves.

*The Resolution of the Committee.*

That James Nayler assumed to be seem him "in whom the Hope of Israel stands."

The Committee being desirous to inform themselves how far the said Nayler was consenting unto that worship and those titles, before given unto him, besides the former evidence, they did find in his examination at Bristol, where being asked why he came in so unusual a manner, as the woman leading his horse, and singing before him? he answered, That he might not refuse any thing that's moved of the Lord: Which being read unto him at the Committee, he denied not. And for the better clearing of this, the Committee examined Hannah Stranger, whether Nayler reproved her for casting her garments before him, or for kneeling, or kissing his feet? From whom they could get no other answer than this, She would not accuse or justify any. The Committee did also find in their examination of Nayler, being asked by them, whether he reproved the women for spreading their garments, and singing before him, answered in these words, Nay, only I said unto them, take heed that they did nothing but what they were really moved of the Lord. And being also examined by the Committee, whether he reproved those that gave him the titles before-mentioned? answered, That he had not at all spoken unto them concerning that thing, only the letters he had, wherein the

titles were given; and did not think at all that any should have seen them, because he knew there was things in them that many could not bear; but now he saw his Father purposed they should not be hid.

Nayler, at his second examination before the Committee, being demanded, whether he had reproved the persons that gave him those titles and attributes? he would not say he had reproved them. Being demanded, whether he owned them, or disclaimed them? answered in these words: If they had it from the Lord, what am I, that I should judge it? And being pressed again with the same question, answered thus; If the Father move them by his spirit to give them to Christ, I may not deny; if they give that to any other but Christ, I disown it. And being asked again, whether he reproved them or not? answered, If attributed to the creature, then it is reprobable; if they did it to the Lord, then I dare not reprove it. And being asked whether he thought not Christ robbed of his honour, by that honour or worship given unto him? answered, That he looked upon it to be really to the true honour of Christ, or else he would utterly have denied it. And being asked, whether he had at any time whatsoever reproved those persons? he answered, I never understood that they gave that honour but to God.

Here we thought to have concluded this report; but the Committee meeting with some further evidence, they were willing you should be partakers of it. And it is this: John Baynham, deputy to the Serjeant of the house, to whose custody Nayler and his company are committed, informed, That the usual posture of James Nayler is sitting in a chair, and his company, both men and women, do sometimes kneel; and when they are weary of kneeling, they sit upon the ground before him, singing these and divers other words to the like purpose, viz. Holy, holy, to the Almighty, to the true God, and great God; and glory to the Almighty, &c. And thus they do usually all the day long: But the informer never heard Nayler sing as aforesaid. And saith, There is great resort to the said Nayler by divers persons, who, most of them, do kneel before him in the manner aforesaid. And Martha Simmons, in the posture aforesaid, sung, This is the joyful day: behold the King of Righteousness is come. And further, the informer saith, That he never knew the said Nayler shew any dislike, either by reproof or otherwise, of that honour or worship which John Stranger and his wife, Martha Simmons, and Dorcas Erbury, and the rest, gave him as aforesaid. And a member of the house, being lately at the place, where Nayler is now a prisoner, informs the committee, that he saw Nayler and his company in the posture, aforesaid: and heard John Stranger and one of the women sing, Holy, holy, holy Lord God; and, Holy, holy, holy to thee, thee, thee, Lord God. And whilst John Stranger sung these words, he did

sometimes look upwards, and sometimes upon James Nayler. Another member informed us, as upon his own view, to the same purpose. And at Nayler's last examination before the Committee, being Wednesday the 3d instant, one William Piggot did inform, That Nayler sitting in a chair where he is now a prisoner, one Sarah Blackbury came to him, and took him by the hand, and said, Rise up, my love, my dove, my fair-one, and come away: Why sittest thou, among the pots? And presently put her mouth upon his hand, and sunk down upon the ground before him.

To which Nayler, himself, being examined by the Committee, confessed she took him by the hand, and spoke the words aforesaid; but denies the putting her mouth upon his hand, and such bowing down: But saith, That he sat low; and that he was not free to go with her. And Nayler being asked to whom she directed that speech? answered, To the Lord, and to him that raiseth from the dust, and casteth them down that are exalted. And being asked whether he reproved her for that expression? he answered, He reproved her not. And further, William Piggot informed the Committee, that the last week he was at the place aforesaid, where Nayler is now a prisoner; and that one Stranger and Martha Simmons were, with others, sitting upon their heels before and about Nayler; and that Stranger rose up, and stood and sung just before Nayler, according to their usual manner of singing, when and where a man Quaker (being present) asked Nayler, Dost thou own that voice? Nayler answered, Yea, I do. And Nayler being asked by the Committee, if this were so, answered, If I tell you the truth, you will not believe me. And Nayler being pressed to answer, whether he owned the voice aforesaid? answered, That voice I will not deny.

To sum up all: The Committee asked Nayler what he had more to say? (that being likely to be the last time of hearing him, before the Committee reported the whole fact to the house) he thus answered:

I do abhor that any of that honour which is due to God should be given to me, as I am a creature: But it pleased the Lord to set me up as a sign of the coming of the righteous one; and what hath been done in my passing through the towns, I was commanded by the power of the Lord to suffer such things to be done to the outward as a sign. I abhor any honour as a creature.

Dec. 5. The Report concerning James Nayler received and read in the House of Commons this day from the Committee.

Dec. 6. The house this day resumed the debate upon the Report touching James Nayler.

Resolved, That James Nayler be brought forthwith to the bar; and that the report of the Committee be read to him; and that it be then demanded of him, what he saith hereunto by confession or denial. He was sent for accordingly: and being brought to the bar, was spoken to to kneel, which he did not; and keeping his

hat on, the serjeant by command of the Speaker took off his hat. And being asked whether his name were James Nayler? He answered, He is so called. Being asked how long he hath been so called? He answered, Ever since he can remember.

The Report that the Committee had drawn up was read to him, and he was demanded to every particular, whether that were his Answer to the Committee? To which he answered particularly, acknowledging them to be so, or to that effect, and so withdrew.

Resolved, That James Nayler be called in to the bar, and demanded several questions. He was accordingly called in, and these questions demanded of him. [What these Questions were is not known, there being no Record kept of them.]

Resolved, That the house doth agree with the Committee in the report of the matter touching James Nayler: That this debate be adjourned till Monday morning; and nothing to intervene: That James Nayler be kept private.

Monday, Dec. 8. The house, according to former Order, resumed the debate upon the business of James Nayler.

Resolved, that this debate be adjourned till three o'clock.

Dec. 8, *p. m.* Resolved, That Candles be brought in.

The question being propounded, That James Nayler, upon the whole matter of fact, is guilty of Blasphemy: and the question being put, That the word "Horrid" be inserted in the question, next before the word "Blasphemy," it passed in the affirmative.

And the question being propounded, That James Nayler, upon the whole matter of fact, is guilty of horrid Blasphemy; and the question being put, That the question be now put, it passed in the affirmative.

And the main question being put, it was Resolved, That James Nayler, upon the whole matter of fact, is guilty of horrid Blasphemy: That James Nayler is a grand Impostor, and Seducer of the people: That the debate upon this Report, touching James Nayler, be adjourned till to-morrow morning.

Dec. 9. The house, according to former order, did resume the debate upon the report touching James Nayler.

Resolved, That the debate be adjourned two hours.

The house adjourned till three o'clock. The house resumed the debate upon the report touching James Nayler.

Resolved, That this debate touching James Nayler be adjourned till to-morrow morning.

Dec. 10. Resolved, That this debate be adjourned till to-morrow morning eight o'clock, and nothing to intervene.

Dec. 11. The house resolved, &c. The question being put, That the house adjourn two hours, the house was divided.

Yeas went forth - 84 Noes - 87  
So it passed in the negative.

Resolved, That the debate touching James Nayler be adjourned till to-morrow morning, and nothing to intervene.

Dec. 12. The house, according to former order, resumed the debate upon the business of James Nayler. Resolved, That this debate, &c. till to-morrow morning, and nothing to intervene.

Dec. 13. The house this day, according to former order, resumed, &c.

The question being propounded, That the debate touching James Nayler be adjourned till Monday morning, and nothing to intervene, the house was divided.

Noes went out - 65 Yeas - 108

So it was resolved, That the debate touching James Nayler should be adjourned till Monday morning eight o'clock, and nothing to intervene.

Dec. 15. The house, according to former order, resumed the debate about James Nayler, and adjourned till to-morrow morning.

Dec. 16. The house, according to former order, resumed.

The question being propounded, That the punishment of James Nayler for his crimes shall be death; and that a bill be prepared, and brought in for that purpose: and the question being put, that the question be now put, the house was divided.

The Noes went forth - 96 The Yeas - 82\*

So it passed in the negative.

The question being put, That this be part of the punishment of James Nayler, To have his hair cut off, it passed in the negative.

Resolved, That this be part of the punishment of James Nayler, That his tongue be bored through with a hot iron.

That the further punishment of James Nayler shall be, That he shall be stigmatized in the forehead with the Letter B.

The question being propounded, That James Nayler be set on the pillory in the New Palace Yard, Westminster, the space of two hours, and then shall be whipped by the hangman through the streets from Westminster to Cheapside; and there likewise to be set upon the pillory for the space of two hours in each of the said places, wearing a paper, containing an inscription of his crimes: that his tongue shall be bored through with a hot iron; and that he be stigmatized in the forehead with the Letter B.

Resolved, That instead of the word "Cheapside" in this question, "the Old Exchange" be inserted.

\* "The parliament hath done nothing these ten days but dispute, whether James Nayler, the Quaker, shall be put to death for Blasphemy; they are much divided in their opinions. It is possible they may come to conclusion this day. It is probable that his life may be spared." Thurtloe to Henry Cromwell, Dec. 16th 1656. 8 Thurtloe's State Papers, 708. "The Parliament came to a vote this day in Nayler's business.—The question for his life was lost by fourteen voices." Postscript to the same Letter.

VOL. V.

Resolved, That these words be added in the question, "with his head in the pillory."

Resolved, That the place for boring his tongue, and stigmatizing, be near the Old Exchange.

The question being propounded, That the prison he shall be committed to, be Bridewell in Bristol; and the question being put, it passed in the negative.

Resolved, That he be committed to prison to Bridewell, London.

Resolved, That instead of the words, "from the Society of all Men," these be inserted, "from the Society of all People."

Resolved, That he have no pen, ink, or paper.

Resolved, That he shall have no relief but what he earns by his daily labour.

Dec. 17. Resolved, that James Nayler be set on the pillory, with his head in the pillory, in the Palace-Yard, Westminster, during the space of two hours, on Thursday next; and shall be whipped by the hangman through the streets from Westminster to the Old Exchange, London; and there likewise be set on the pillory, with his head in the pillory, for the space of two hours, between the hours of eleven and one, on Saturday next; in each place wearing a paper containing an inscription of his crimes; and that at the Old Exchange his tongue be bored through with a hot iron: and that he be there also stigmatized in the forehead with the Letter B; and that he be afterwards sent to Bristol, and be conveyed into and through the said city on horseback, bare-rigged, with his face backward, and there also publicly whipped the next market-day after he come thither; and that from thence he be committed to prison in Bridewell, London, and there restrained from the society of all people, and there to labour hard till he shall be released by parliament; and during that time to be debarred the use of pen, ink, and paper, and shall have no relief but what he earns by his daily labour.\*

Resolved, That the said James Nayler be brought to the bar to-morrow morning by ten of the clock to receive this Judgment.—That the Speaker be authorized to issue his warrants to the sheriffs of London and Middlesex, the sheriff of Bristol, and governor of Bridewell, to see this Judgment put in execution respectively in the said places.—That the Speaker be authorized to make his warrant to the sheriffs of London and Middlesex, to convey the said Nayler to Bristol.—That the Speaker do issue the like warrant to the sheriff of Bristol, to convey him up to London after the execution of this Judgment there.—That to-morrow, after the Sentence is pronounced against James Nayler, the several petitions now offered be read:—That then the house do likewise take into consideration the persons brought up with James Nayler.

The House being informed that James Nayler was brought to the door, according to the

\* "A sentence," says Neal, "much too severe for such a simple obstinate creature."

3 G

former order made yesterday, that he should be brought to the bar to receive the Judgment and the Resolution made yesterday, touching the said James Nayler, for his punishment :

Resolved, That these words be added to the said Resolution, viz. " And the Parliament do declare and judge the same accordingly."

The question being propounded, That James Nayler be had in, and before Judgment pronounced be demanded, whether he have any thing to say, why Judgment should not be pronounced upon him? And the question being put, That this question be now put, the house was divided. The Noes went forth, 107; The Yeas, 87.—So it past in the Negative.

The said James Nayler was by order of the house brought into the bar; where the Speaker acquainted him of the heinousness of the crime of which the parliament found him guilty; and accordingly did pronounce the Judgment against him; upon which he withdrew.\*

\* Upon this occasion there was published, by Authority of the Parliament, the following Paper, intitled, ' A brief Account of James Nayler, the Quaker; and the uttering of many horrible Blasphemies, the like, for all Circumstances, never heard of in any Age before, with the Judgment pronounced upon him by Mr. Speaker, he being brought to the Bar in the Commons House, for those high Crimes whereof he had been guilty, Dec. 17, 1656.' At the top of this Sheet is a Print engraved by Hollar, representing the manner of Nayler's sentence being put in execution. Then follows the Account itself, *in hæc verba* : " James Nayler, the Quaker, having been released out of Exeter goal, he began immediately to play his pranks at divers places in the West; among the rest, he passed by Wells and Glastonbury, through which towns he rode on horseback, a man going bare before him, and others walking on foot on each side of his stirrup, and others strewing their garments in the way; from thence he took his way towards Bristol, and coming to a little village called Bedminster, about a mile from Bristol, he rode through that place likewise, a young man bare-headed leading his horse by the bridle, and another man before with his hat on. There accompanied him two men, with each a woman behind him on horseback; which women alighted when they came to the suburbs of Bristol, and footed it along on each side of Nayler's horse, the man still bare-headed leading the horse; and as they advanced along they sung, and entered Bristol singing, ' Holy, Holy, Holy, Lord God of Israel; ' and then the women led the horse with the reins in their hands, up to the high-cross of Bristol, and from thence to the White-Hart inn in Broad street. The magistrates sending for Nayler and his companions, they came singing all the way ' Hosannah; ' and ' Holy, Holy, Holy, &c.' His name that went bare before him was Timothy Wedlock, a Devonshire man. The one woman was named

Which Sentence was accordingly executed upon him; and some of his followers were so prodigiously impious and silly as to lick his wounds, kiss his feet, lean in his bosom, &c.

When he came first to Bridewell, to carry on the Imposture he fasted three days; but flesh and blood being able to hold out no longer, he fell to work to earn himself some food. Upon the return of the Rump he obtained his liberty, and died soon after without any signs of repentance.

Martha Symonds, wife of Thomas Symonds, stationer of London: the other Hannah Stranger, wife of John Stranger, of London, comb-maker. The magistrates having conveyed Nayler and the rest, divers strange blasphemous Letters and Papers were found about them, wherein it appeared, that this deceiver had so far gained upon his followers by his impostures, that they ascribed to him divine honours, and gave him in Scripture phrase the same titles which are applicable to none but Christ himself. In a Letter of one Richard Fairman, from Dorchester goal, to Nayler, were these horrid expressions, ' I am filled ' with joy and rejoicing when I behold thee in ' the eternal unity. O my soul is melting with- ' in me, when I behold thy beauty and immo- ' rality, dear and precious son of Zion, whose ' mother is a virgin, and whose birth is immor- ' tal.' Another writes of him thus, ' All the ' wise men shall seek for him, and when they ' have found him, they shall open their ears, ' and shall give unto him of their gold, frank- ' incense, and myrror.' The same woman, in another letter to him, proceeds thus, ' O thou ' fairest of ten thousand; thou only begotten ' son of God, how my heart panteth after thee, ' O stay me with flagons, and comfort me with ' wine. My well-beloved, thou art like a roe, ' or young hart, upon the mountains of spices.' Then by way of Postscript, her husband, John Stranger, adds this, ' Thy name is no more to ' be called James but Jesus.' Also a maid named Dorcas Erbury, being examined, declared James Nayler, to be the Holy one of Israel, the only begotten Son of God; and that she pulled off his stockings, and put her cloaths under his feet, because he was the Holy Lord of Israel, and that she knew no other Saviour but him; affirming moreover, That the Spirit of the Lord within her commanded her to call him Lord and Master, and to serve him: That, in Exeter goal, he had raised her from the dead after she had been dead two days; and that James Nayler shall sit at the right hand of the Father, and judge the world. Thus you see how this wretched Impostor hath prevailed upon his followers, to bewitch them to the committing of strange absurdities. An account, whereof I had hitherto forbore, but have now given in brief, that the honour and justice of the Parliament's Sentence passed upon him, may be evident to the people." 3 Cobb. Parl. Hist. 1490.

In the Debate upon the Question, Whether

James Nayler should be punished with

Death? Lord Commissioner WHITELOCKE

delivered his Opinion, to this effect, viz.

The arguments of those gentlemen who would have James Nayler put to death, are chiefly drawn from these three grounds; 1. From the law of nature. 2. From the law of God. 3. From the law of the land. And I hold that he ought not to suffer death by any of these laws.

First, As to the law of nature :

1. It is held among the politicians. That the subject thereof is *Conservatio sui*; for that every creature by the law of nature seeks his own conservation. Then, Whether the conservation of the people and Commonwealth of England do depend upon the life or death of James Nayler? is the question. It is likewise held among the politicians, That there is no judge of the law of nature, but only the supreme magistracy of each particular Commonwealth; and that within their own bounds only; and of a present case, not of a past or future case.—As in England; the parliament only is the judge of the law of nature, in England, and of the present case before them; wherein if the parliament shall adjudge, That it is necessary for the being and preservation of the people and Commonwealth of England, that James Nayler be put to death, then he ought to die by the law of nature. But I suppose that no gentleman is of opinion, That it is necessary for the being and preservation of the people and Commonwealth of England, that James Nayler should be put to death; and therefore on that head or principle of the law of nature, he is not to die.

2. If by the law of nature a blasphemer is to die, How comes it to pass that Moses was so doubtful in the case of the Egyptian, in the 21th chapter of Leviticus? He put him in ward, and asked counsel of God what should be done with him. Moses was a man of great knowledge and wisdom, and as able to understand the law of nature as any of us are; and if the case of the Egyptian had been against the law of nature, he was surely capable to have found it out, and not to have made so much difficulty as he did of it, so as to know the immediate pleasure of God in it.

3. The crimes of James Nayler cannot be against the law of nature, because they are against the second person of the Trinity, the knowledge of whom is not by the law of nature, but by the law of grace only; and therefore cannot be an offence against the law of nature, by which there cannot be any knowledge of him.

But it hath been objected, that the papists put to death those who deny the real presence, and other of their opinions held contrary to the truth; and that the very heathens, by the light of nature, did put to death such as denied or reproached their idol gods; and how much

more zeal ought we to have for the honour of the only true God whom we worship!

This may be answered in the parallel, That neither are we to follow the examples of those bloody, persecuting papists; nor is James Nayler worthy the honour to be ranked amongst the holy martyrs. And, as to the judgments of the heathens, they were against such as denied their gods to be gods; but James Nayler at the bar did acknowledge, that Jesus Christ, who died at Jerusalem, was the son of God and the Saviour of the world.

And some of the heathen princes, by their light of nature, when flattery and their own strength did bear them out, assumed the names and titles of the gods of their countries, and were worshipped by their vassals.

Herein, James Nayler came towards them, permitting, and not reproving those who did adore him; which he would evade by the distinction, That as he is a poor creature, and visible, no adoration is due to him; but, as to that power which is invisible, that Christ within him, he is to be worshipped. That Christ is in the heart of a true believer, is not so strange a doctrine, as that a man is to be worshipped, who saith, That Christ is in him. But yet it cannot be warranted by the law of nature, to put a man to death for these assertions.

Then secondly,

The second ground is the law of God: By which it is objected, That this man being guilty of horrid blasphemy, ought to be put to death. And the case of the Egyptian is instanced in, and much insisted on as a positive rule and law for us to do the like, in the case of James Nayler. Herein I think it not improper, first to consider the signification of the word Blasphemy, and what it comprehends in the extensiveness of it; and I take it to comprehend, The reviling or cursing the name of God, or of our neighbour. And Gregorius Turonensis, in his Appendix, cap. 51. hath this expression, 'Liberare poteras de blasphemia hanc causam.' From whence the French word, *Blasme*; and our English *Blame*. Spelman saith it is 'increpare, vel convitit aliqueum affere.' Paræus derives it from *βλάπτω τὴν φάμιν* i. e. *Lesio Fama*. And is this in relation to men, as well as to God.

And therefore the great Objection is taken away, That the parliament having voted him guilty of horrid blasphemy, cannot in honour and conscience inflict upon him a less punishment than death, for this offence. They have not voted it blasphemy against God; and it appears the word extends to men, in the genuine signification of it. But I shall take it according to the usual acceptation among us, and, as I suppose, it is intended by the Vote, That he is guilty of horrid Blasphemy against God. Yet I do not find myself convinced, that by the law of God, whosoever is guilty of horrid blasphemy amongst us, is to be put to death.

That we ought all of us as magistrates and

Christians, to bear our testimony against these abominable crimes, and against this poor wretch, I do agree; but that the punishment for those offences must be death, I am not satisfied. That the law of God is so, many gentlemen have urged the case of the Egyptian, the Israelitish woman's son striving with the Israelite, in the 24th chapter of Leviticus, because God determined that he should die; and therefore, as their argument is, James Nayler must also die, By the same argument he must be stoned to death; and so must every rebellious son, and even he that gathereth sticks on the sabbath day and the like. Very learned divines are of opinion, and I think it not to be confuted, That no part of the law of the Jews doth bind any other nation, but that part of it only which is moral. The laws of the Israelites were by the wisdom of God, suited to the inclinations and dispositions of that people; and others (as there is great difference between the inclinations of people) must have different laws: and none hath ever yet affirmed, that this or that punishment of any offence is moral, though the offence itself be so.

But to come to a more particular disquisition of the case of this Egyptian. He was one bred up in the worship of the idol gods of Egypt; and in striving with the Israelite, it is conceived, that he preferred his own god before the God of Israel, and said, that their god did not bring them out of the land of Egypt, nor was able to do it. There is a difference to be observed in this chapter between the offence of this Egyptian, and the offence of blaspheming, or cursing of God in another case. In the 15th verse of this 24th chapter of Leviticus it is said thus 'And thou shalt speak to the children of Israel, saying, אָשָׁם אָשָׁם man, man,' i. e. 'Whosoever or whatever man shall קָלַל 'curse God shall bear his sin;' that is shall be punished as the nature of the fact shall require; so saith Aynsworth in *Lucum*, shall bear the punishment due for his sin.

The word 'curse' in Hebrew is יָקַל Jicallel, the root of which signifieth, 'to count light of;' and in the conjugation P'iel is found to signify to 'curse out of evil will,' to speak ill of, or to imprecate; and also, to speak evil, so as by speaking to bring it.

This 15th verse in Grotius's opinion (in his exposition upon this text) is to be understood of him that curseth, but not distinctly naming the sacred name Jehovah, nor taking from him his reverence and deity, as if he were no God, and so is to be punished with an arbitrary punishment, as stripes, or the like.

But the 16th verse is thus, 'And he that blasphemeth נָקַב Nokeb' from the root נָקַב Nacabh, which signifies, 'to run through,' or to 'bore through,' and also to speak or name to one's disgrace; and is the same with the Latin phrase, 'confingere nomen alicujus maledictis.' The emphasis is not in this word, but in the other שֵׁם Shem, and יְהוָה Jehovah; and when that name was named, it was a most immediate

and direct blaspheming of God; detracting from him his honour and deity.

'He that blasphemeth the name Jehovah, or the name of Jehovah, shall surely be put to death, and all the congregation shall stone him.' Upon this, Aynsworth is of opinion, that the Hebrews some of them will not sentence this blasphemer with death, unless Jehovah be named; which opinion he disalloweth, saying, That the word is not so much, but the thing is to be respected. But he seems to require, that the blasphemer must immediately speak ill of God, or blaspheme him, or else he is not subject to this punishment.

Grotius agrees with the Rabbins, who say, that every cursing of God was not punishable with Death, but that the punishment in some cases was arbitrary, as the godly Judgment of those, who were to censure, should determine. But if Jehovah were named by a Jew, or others under their government, and so expressly and immediately dishonoured, that was be punished with death. Wherein he doth distinguish between immediate and express blasphemy, and that which is so interpretatively only; and signifieth, that the punishment by stripes was only inflicted upon him that did blaspheme but *interpretatively*, and not *maliciously* nominating Jehovah.

This judgment of Grotius seems to me to be reasonable, and that the offence of James Nayler is within the 15th verse of this text, a blasphemy interpretatively only, and therefore punishable with stripes or the like. But that it is not within the 16th verse, an immediate and direct reproaching of the name of God; for at your bar he did acknowledge Jesus Christ to be the Saviour of the world, &c.

And if it be not within the 16th verse, then it is not punishable by death according to that law of the Jews, admitting the same to be binding amongst us Christians; as with submission to better judgments I think it is not, no more than those other laws of theirs of the like nature. Nor can any sort of punishment be construed to be moral. I (therefore) conclude this point, that there is no binding rule or law of God, that for these offences James Nayler ought to be put to death.

And if the matter be but doubtful, we should, *in favorem vite*, incline to the way of most mercy.

Thirdly, The Third Ground is, The Law of the Land.

And hereupon hath been observed, That by the laws of other nations blasphemy is punishable with death; And shall we do less for the honour of God, than others? And a worthy gentleman reported a case, which did lately happen in France, where the parliament of Bourdeaux adjudged an Englishman to death, upon the complaint of the protestants there, for blasphemy, in saying, 'That he was Christ.'

I know not what might be lately done there, but I find the laws of France concerning Blasphemy, in the code of foreign decisions, and of

Henry 3, to be this: That for the first four offences, a blasphemer may be committed to prison to bread and water; for the fifth offence, to have his under lip slit; for the sixth, that his under lip should be cut so that his teeth be seen; for the seventh, his tongue to be bored; and for the eighth offence he is to be put to death.

It is true, that the Popish countries, where the inquisition is in force, do put Protestants to death as blasphemers; but I hope that will be no precedent for us to imitate. The Lutherans do hold the Ubiquity of Christ in such sort, that the news of James Nayler's being put to death for these offences, would not be pleasing to them. But to come to that which is most proper for your consideration, and for my discourse, The law of England.

I must acknowledge my own ignorance, that I do not know any law of this nation now in force, for the putting of James Nayler for these offences to death.

It is held that the Ordinance \* of the Long Parliament concerning blasphemy is not now in force, and I do agree to that opinion; nor do I know any other law in that case. That ordinance cost much debate, and therein was a great diversity of judgments; and so I presume we shall again find it, whensoever these matters shall fall under consideration. The objection was very weightily urged, That there is a law in force against Heresy, as appears by the writ *De Hæretico comburendo*, which (they say) was by the common law; and that blasphemy is an Heresy within that law; by which he may be put to death. This objection may receive a clear answer.

I am not of opinion, That Heresy was punishable by the common law with death, notwithstanding the writ *De Hæretico comburendo* be in the Register; for it is not in the ancient manuscript registers, which indeed is a true part and demonstration of the Common Law †.

But this Writ was of later date, and brought in by Arundel archbishop of Canterbury, in Henry the 4th's time, for the punishment and suppression of Lollards, who were good Christians, and of the same profession that we are. But the bloody practice of that prelate did not

work the effect he intended, as appears (blessed be God) at this day. Yet if it should be admitted that Heresy was punishable by death at the Common Law, that cannot include Blasphemy.

They are offences of a different nature; Heresy is *Crimen Judicii*, an erroneous opinion; Blasphemy is *Crimen Mælitia*, a reviling the name and honour of God. Heresy was to be declared in particular, and by the four first general Councils. But the Blasphemy in this Vote is general; and I do not find it reckoned in those Councils for Heresy.

I remember a Case in our Book of H. 7, where the bishop committed one to prison for a heretic, and the heresy was, denying 'that tythes were due to his parson.' This at that time was a very great heresy; but now I believe some are inclinable to think, that to say, 'Tythes are due to the parson,' is a kind of heresy.

So in this Case, That which now may be accounted Blasphemy, and the offender to be put to death for it; in another age the contrary may be esteemed Blasphemy, and the offender likewise put to death for that; which may be warranted by the present case before you, if James Nayler should be put to death upon the general Vote for being guilty of horrid Blasphemy, the particulars thereof not being expressed.

And what mischief and inconvenience in the consequence thereof may ensue to the people of England, and to posterity, is worthy the care of a parliament, and to be avoided, we being sent hither to provide for the good and safety of the people; and not to do that, which may bring them into snares and dangers. If this wretch be put to death, it must be either by judgment of the parliament, as the supreme court of justice; or by act of parliament to attain him of the crimes, and to inflict the punishment of death upon him for those crimes.

If you shall think fit to proceed in the judicial way, I hope you will be pleased to consider the weight of the consequences thereof, and to be very clear in the foundation, we being here in a constitution different from the former. And whosoever will take the pains to read the Records of the Parliament-Rolls in Edward the 2nd, and Richard the 2nd's time, of the Judgments then given in parliament, (with quickness and sharpness enough) and the speedy executions thereupon, will be the more tender of making new precedents of such proceedings in parliament.

I am far from derogating from the honour and authority of parliaments, and of this especially; but I humbly inform you what I have observed, and submit it to your better judgment. It is held, That antiently the judicatory of parliaments was in the Lords' house, and particularly in criminal causes, which was very frequent; but seldom without an impeachment by the then house of commons, who were as the grand jury in that respect of the whole nation.

You are now the sole parliament of England,

\* This Ordinance bears date May 2, 1648, and ordains, that whoever should maintain any one of the several opinions (there called Errors), unless he would abjure the same, or after Abjuration shall relapse, should be guilty of Felony without benefit of Clergy.

† See the preceding cases of Heresy in this Collection, particularly that of William Sautre, vol. 1. p. 163, and the authorities referred to in the notes. See also in Black-t. Comm. B. 4, c. 4, a succinct account of our laws concerning Heresy, in the course of which that learned Judge takes occasion to observe that, "Christianity being upon the continent thus deformed by the Demon of Superstition, we cannot expect that our own island should be entirely free from the same scourge."

and have the sole power in you; yet probably some may object, whether in a judicial proceeding the Lord Protector ought not to join with you. I do not know any Judgment given in parliament, but where there was a known law then in force against the offence adjudged, and the Judgment given according to that known law.

In this case of James Nayler there is no known law in force for the punishment of his offence with death, and therefore I am not satisfied, that we should by Judgment of parliament condemn him to death; nor to make a new law for the punishment of an offence by death, which law was not known nor made at the time of the offence committed; and this to be done by a Judgment.

Perhaps it will be said, That this may be done by a Bill of Attainder, and I perceive many gentlemen inclined thereunto; they have remembered the cases of the earl of Strafford, and of the archbishop of Canterbury, who were attainted by Bill; and the offences by them committed were not treason by the known law at the time when they were committed, and yet by act of parliament they were attainted of treason for those offences.

But here we are to observe, That in those Acts of Attainder is a clause, That they shall not be drawn into precedent; and I hope they shall not.

And further give me leave to inform you, That there is a great difference between those

cases, and that now before you. By the stat. 25 E. 3, Treasons are enumerated, and a power is left in the parliament to declare any other facts to be treason. And the facts of the earl of Strafford, and of the Archbishop, in the general was the same, endeavouring to subvert the fundamental laws of the land, and to introduce an arbitrary and tyrannical government; which were maintained by the arguments of a very learned and honourable person, now a chief justice, to be treason by the common law of England.

But it will be hard to maintain, that the offences of James Nayler are punishable by death by the common law of England, and therefore it will be very dangerous in the consequence of it to inflict this punishment upon him by a new law.

I shall not mention the loss of time (whereof too much hath been already spent about this matter) in case you shall proceed by Bill. All the matter must be again debated and examined by you, and after that by my Lord Protector. But the mischief which it may produce to the people of England in the precedent of it, wherein no man can be safe, that by a law now to be made you should inflict the punishment of death upon James Nayler for offences which were not by the law of England punishable by death at the time when they were committed, is the strong argument with me to be against the question for the putting of James Nayler to death for these offences.

*From the Harleian Miscellany, vol. 6, p. 392.*

### The grand Impostor examined: Or, the Life, Trial, and Examination of JAMES NAYLER, the seduced and seducing Quaker; with the Manner of his Riding into Bristol.

"We have a Law, and by our Law he ought to die, because he made himself the Son of God." John xix. 7.

"But these are written, that ye might believe, that Jesus is the Christ, the Son, of God; and that, believing, ye might have Life through his Name." John xx. 31.

London, Printed for Henry Brome, at the Hand in St. Paul's Church-yard, 1656. Quarto, containing 56 pages.

#### TO THE READER.

Courteous Reader; I do here give thee an account of what passed between James Nayler and his judges, as thinking it a part of my duty, towards God and Man; that thereby, thou mayest see and know, there is but one only God, and one only Jesus, which is the Christ, who was crucified by the Jews at Jerusalem; which whosoever denies, let him be accursed.

It hath been the custom, in former times, to immure, stone, or otherways punish with death, such as did falsely stile themselves the only Sons of the most High God; as thou mayest see in

that faithful Chronologer, John Speed; who affirmeth, That, in the Reign of King Henry the Third, there appeared a grand impostor, somewhat, in wickedness, resembling this, of whom we are to treat: this man (or rather Devil) thinking himself to be somebody, boasted himself to be nobody in the eyes of the world, but as being sent from Heaven; and, having a grave and impudent aspect, pretended himself to be no less than the Saviour of Mankind: and to strike a belief into the easily seduced people, he had wounded his hands, feet, and side; affirming these to be the wounds, which the Jews had given him at Jerusalem. For which blasphemous and horrid doctrine,



he was sentenced to be starved to death, between the walls of a strong prison, where he and his doctrine died : even so let thine enemies perish, O Lord.

Thou wilt, in his Examination, discover some difference to be between him and George Fox ; but I suppose they are again reconciled.

I shall not trouble thee with all the many letters, which were conveyed from him to others, or from them to him, lest I make my relation swell too big : I shall only give thee two or three of the chiefest ; out of which if thou canst pick but a little sense, and less truth, thou canst do more than,

Dec. 16, 1656.

Thy loving Friend.

Reader ; Thinking it a very good foundation to my building, to give you the manner of his progress, before you come to his confession, or before his blasphemy aspires to the Stool of Repentance, I shall thus begin : James Nayler of Wakeheld, in the county of York, a deluded and deluding Quaker and impostor, rode, October last, through a village called Badmister, about a mile from Bristol, accompanied with six more, one whereof, a young man whose head was bare, leading his horse by the bridle, and another uncovered before him, through the dirty way, in which the carts and horses, and none else, usually go. and with them, two men on horseback, with each of them a woman behind him, and one woman walking on the better way or path. In this posture, did they march ; and in such a case, that one George Witherly, noting their condition, asked them to come in the better road, adding that God expected no such extremity : but they continued on their way, not answering in any other notes, but what were musical, singing, " Holy, holy, holy, Lord God of Sabaoth, &c." Thus continued they, till, by their wandering, they came to the alms-house, within the Suburbs of Bristol, where one of the women alighted, and she, with the other of her own sex, lovingly marched on each side of Nayler's horse. This Witherly saith, he supposes, they could not be less deep in the muddy way, than to the knees ; and, he saith, they sang, but sometimes with such a buzzing melodious noise, that he could not understand what it was. This the said Witherly gave in, upon his oath. Thus did they reach Ratcliffe-gate, with Timothy Wedlock of Devon bare-headed, and Martha Symonds with the bridle on one side, and Hannah Stranger, on the other side of the horse ; this Martha Symonds is the wife of Thomas Symonds, of London, book-binder ; and Hannah Stranger is the wife of John Stranger of London, comb-maker, who sung Holy, holy, holy, Lord God of Israel. Thus did he ride to the high Cross in Bristol, and after that, to the White-Hart in Broadstreet, where there lie two eminent Quakers, by name Dennis Hollister and Henry Row ; of which the magistrates hearing, they were apprehended and committed to prison.

Long it had not been, after their confine-

ment in the Gaol at Exeter, from whence, passing through Wells and Glastenbury, this party bestrewed the way with their garments. But, to be short, they were searched, and letters were found about them, infinitely filled with profane nonsensical language ; which letters I shall not trouble you with, only some of the chief, lest your patience should be too much cloyed. We shall haste now to their Examinations ; and, because Nayler was the chief actor, it is fit he have the pre-eminence of leading the way in their Examinations ; we shall therefore give you a full account of what passed between the magistrate and him, which take as followeth :

The Examination of James Nayler, and others.

Being asked his name, or whether he was not called James Nayler, he replied, The men of this world call me James Nayler.

*Quest.* Art not thou the man that rid' on horse-back into Bristol, a woman leading thy horse, and others singing before thee, Holy, holy, holy, Hosannah, &c. ?

*Ans.* I did ride into a town, but what its name was I know not, and, by the spirit, a woman was commanded to hold my horse's bridle, and some there were that cast down clothes, and sang praises to the Lord, such songs as the Lord put into their hearts ; and it is like it might be the Song of Holy, holy, holy, &c.

*Q.* Whether or no didst thou reprove those women ?—*A.* Nay but I bade them take heed, that they sang nothing but what they were moved to by the Lord.

*Q.* Dost thou own this letter (whereupon a letter was shewed him) which Hannah Stranger sent unto thee ?

*A.* Yea, I do own that letter.

*Q.* Art thou (according to that letter) the Fairest of Ten-Thousand ?

*A.* As to the visible, I deny any such attribute to be due unto me ; but if, as to that which the Father has begotten in me, I shall own it.

But now, reader, before I pass further I hold it not impertinent to deliver you the words of the same letter, with another, which were these :

A Letter to James Nayler at Exeter, by Hannah Stranger.

J. N.

In the pure fear and power of God, my soul salutes thee, thou everlasting Son of Righteousness and Prince of Peace. Oh ! how my soul travelleth to see this day, which Abraham did, and was glad, and so shall all that are of faithful Abraham : O ! suffer me to speak what the Lord hath moved. There is one Temptation near, the like unto the first, and is like the Wisdom of God, but it is not, and therefore it must be destroyed. Oh ! it defileth and hateth the innocent ; I beseech thee wait, my soul travelleth to see a pure Image brought forth, and the enemy strives to destroy it, that he may keep me always sor-

rowing, and ever seeking, and never satisfied, nor never rejoicing: but he in whom I have believed will shortly tread Satan under our feet, and then shalt thou and thine return to Zion with everlasting rejoicings and praises. But, till then, better is the house of mourning than rejoicing, for he that was made a perfect example, when he had fasted the appointed time of his Father, was tempted to eat, and to shew a miracle, to prove himself to be the Son of God: but man lives not by bread, said he, and now no more by that wisdom shall he live, on which he hath long fed, as on bread; and, as his food hath been, so must his fast be, and then, at the end, temptation, to as low a thing as a stone, that, if it were possible, the humility and the miracles would deceive the elect, innocent, and righteous branch of holiness. But, be his wills never so many, the time comes he shall leave thee, for he is faithful, who hath promised he will not leave the Throne of David without a man to sit thereon, which shall judge the poor with righteousness, and the world with equity. This shall shortly come to pass, and then shall the vision speak, and not lye. Oh! let innocency be thy beloved, and righteousness thy spouse, that thy Father's lambs may rejoice in thy pure and clear unspotted Image of Holiness and purity, which my soul believeth I shall see, and so in the faith rest. I am in patience, wait, and the power will preserve from subtlety; though under never so zealous a pretence of innocent wisdom it be, yet shall the Lord not suffer his Holy One to see corruption, nor his soul to lie in hell, but will cause the mountains to melt at his presence, and the little hills to bring him peace: Oh! I am ready to fear as a servant, and to obey as a child. If I have spoken words too high, love hath constrained me, which is as strong as death; and with the same spirit cover them as they are spoken with, and then shall the spirit of David be witnessed, who refused not words, though from his servants mouth; if they were in the fear, I am his servant, and he my master whom I love and fear, and trust I shall do unto the end.

HANNAH STRANGER.

From London, 16th day of the 7th month.

Another of the same.

Oh! thou fairest of ten thousand, thou only begotten Son of God, How my heart panteth after thee? O stay me with flaggons, and comfort me with wine. My beloved, thou art like a roe, or young hart, upon the mountains of spices, where thy beloved spouse hath long been calling thee to come away, but hath been but lately heard of thee. Now it lies something upon me, that thou mindest to see her, for the spirit and power of God is with her; and there is given to her much of excellent and innocent wisdom arisen, and arising in her, which will make all the honest-hearted to praise the Lord alone, and no more set up self. And therefore let not my Lord and Master have any jealousy again of her, for she

is highly beloved of the Lord, and that shall all see who come to know the Lord. And --- he doth bless them that bless his, and curse them that curse his; for this hath the Lord shewed me, That her portion is exceeding large in the Lord; and, as her sorrow hath been much, so shall her joy be much more; which rejoiceth my heart, to see her walk so valiantly and so faithfully in the work of the Lord, in this time of so great trials as hath been laid upon her especially. And I am

HANNAH STRANGER.

#### The Postscript.

Remember my dear love to thy master. Thy name is no more to be called James but Jesus.

JOHN STRANGER.

This John Stranger is husband to this Hannah Stranger; and this was added as a Postscript by him to his wife's letter, as is acknowledged.

Remember my love to those friends with thee. The seventeenth day of the eighth month, superscribed this to the hands of James Nayler.

We shall now return to his Examination.

Q. Art thou the only Son of God?

A. I am the Son of God, but I have many brethren.

Q. Have any called thee by the name of Jesus?

A. Not as unto the visible, but as Jesus, the Christ that is in me.

Q. Dost thou own the name of the King of Israel?

A. Not as a creature, but if they give it Christ within, I own it, and have a kingdom but not of this world; my kingdom is of another world, of which thou wotest not.

Q. Whether or no art thou the Prophet of the Most High?

A. Thou hast said, I am a Prophet.

Q. Dost thou own that attribute, the Judge of Israel?

A. The judge is but one, and is witnessed in me, and is the Christ, there must not be any joined with him: if they speak of the spirit in me, I own it only as God is manifest in the flesh, according as God dwelleth in me, and judgeth there himself.

Q. By whom were you sent?

A. By him who hath sent the Spirit of his Son in me to try, not as to carnal matters, but belonging to the kingdom of God, by the indwelling of the Father and the Son, to judge of all spirits, to be guided by none.

Q. Is not the written word of God the guide?

A. The written word declares of it, and what is not according to that is not true.

Q. Whether art thou more sent than others, or whether others be not sent in that measure?

A. As to that I have nothing at present given me of my Father to answer.

Q. Was your birth mortal or immortal?

A. Not according to the natural birth, but

according to the spiritual birth, born of the immortal seed.

Q. Wert thou ever called the Lamb of God?

A. I look not back to things behind, but there might be some such thing in the letter; I am a lamb, and have sought it long before I could witness it.

Q. Who is thy mother, or whether or no is she a virgin?

A. Nay, according to the natural birth.

Q. Who is thy mother according to thy spiritual birth?

A. No carnal creature.

Q. Who then?

A. [To this he refused to answer.]

Q. Is the hope of Israel in thee?

A. The hope is in Christ, and as Christ is in me, so far the hope of Israel stands; Christ is in me, the hope of glory.

Q. What more hope is there in thee than in others?

A. None can know but them of Israel, and Israel must give an account.

Q. Art thou the everlasting Son of God?

A. Where God is manifest in the flesh, there is the everlasting Son, and I do witness God in the flesh; I am the Son of God, and the Son of God is but one.

Q. Art thou the Prince of Peace?

A. The Prince of everlasting Peace is begotten in me.

Q. Why dost thou not reprove those that give thee these attributes?

A. I have said nothing unto them, but such things are written.

Q. Is thy name Jesus?

[Here he was silent.]

Q. For what space of time hast thou been so called?

[And here.]

Q. Is there no other Jesus besides thee?

[These questions he forbore either to confirm or to contradict them.]

Q. Art thou the everlasting Son of God, the King of Righteousness?

A. I am, and the everlasting righteousness is wrought in me; if ye were acquainted with the Father, ye would also be acquainted with me.

Q. Did any kiss thy feet?

A. It might be they did, but I minded them not.

Q. When thou wast called the King of Israel, didst thou not answer, thou sayest it?

A. Yea.

Q. How dost thou provide for a livelihood?

A. As do the lillies without care, being maintained by my Father.

Q. Whom dost thou call thy Father?

A. He whom thou callest God.

Q. What business hadst thou at Bristol, or at way?

A. I was guided and directed by my Father.

Q. Why wast thou called a Judge to try the cause of Israel?

[Here he answered nothing.]

Q. Are any of these sayings blasphemy or not?

VOL. V.

A. What is received of the Lord is truth.

Q. Whose letter was that which was writ to thee, signed T. S.

A. It was sent me to Exeter gaol by one the world calls Tho. Symonds.

Q. Didst thou not say, if ye had known me, ye had known the Father?

A. Yea, for the Father is my life.

Q. Where wert thou born?

A. At Anderslow in Yorkshire.

Q. Where lives thy wife?

A. She, whom thou callest my wife, lives in Wakefield.

Q. Why dost thou not live with her?

A. I did, till I was called to the army.

Q. Under whose command didst thou serve in the army?

A. First, under him they call lord Fairfax.

Q. Who then?

A. Afterwards, under that man called col. Lambert: and then I went into Scotland, where I was a quartermaster, and returned sick to my earthly habitation, and was called into the North.

Q. What wentest thou for to Exeter?

A. I went to Lawson to see the brethren.

Q. What estate hast thou?

A. I take no care for that.

Q. Doth God in an extraordinary manner sustain thee, without any corporal food?

A. Man doth not live by bread alone, but by every word that proceedeth out of the mouth of the Father: the same life is mine that is in the Father; but not in the same measure.

Q. How art thou clothed?

A. I know not.

Q. Dost thou live without bread?

A. As long as my heavenly Father will: I have tasted of that bread, of which he that eateth shall never die.

Q. How long hast thou lived without any corporal sustenance, having perfect health?

A. Some fifteen or sixteen days, sustained without any other food except the word of God.

Q. Was Dorcas Erbury dead two days in Exeter, and didst thou raise her?

A. I can do nothing of myself: the Scripture beareth witness to the power in me which is everlasting; it is the same power we read of in the Scripture. The Lord hath made me a sign of his coming: and that honour that belongeth to Christ Jesus, in whom I am revealed, may be given to him, as when on earth at Jerusalem, according to the measure.

Q. Art thou the unspotted Lamb of God, that taketh away the sins of the world?

A. Were I not a lamb, wolves would not seek to devour me.

Q. Art thou not guilty of horrid blasphemy, by thy own words?

A. Who made thee a judge over them?

Q. Wherefore camest thou in such an unusual posture, as, two women leading thy horse; others singing, Holy, holy, &c. with another before thee bare-headed, knee-deep

3 H

in the highway-mud, when thou mightest have gone in the cause; and at such a time, that, it raining, thy companions received the ruin at their necks, and vented it at at their hose and breeches?

A. It tended to my Father's praise and glory, and I ought not to slight any thing which the spirit of the Lord moves.

Q. Dost thou think the spirit of the Lord moved, or commanded them?

A. Yea.

Q. Whom meant they by Holy, holy, holy, &c.?

A. Let them answer for themselves, they are at age.

Q. Did not some spread their cloaths on the ground before thee, when thou riddest through Glastenbury and Wells?

A. I think they did.

Q. Wherefore didst thou call Martha Symonds mother, as George Fox affirms?

A. George Fox is a liar and a firebrand of hell; for neither I, nor any with me, called her so.

Q. Thou hast a wife at this time?

A. A woman I have, who by the world is called my wife; and some children I have which according to the flesh are mine.

Q. Those books which thou hast writ, wilt thou maintain them, and affirm what is therein?

A. Yea, with my dearest blood.

#### *Martha Symonds's Examination.*

She confesseth, she knew James Nayler formerly; for he is now no more James Nayler, but refined to a more excellent substance; and so she saith she came with him from Bristol to Exeter.

Q. What made thee lead his horse into Bristol, and sing Holy, holy, holy, &c.? And to spread thy garments before him?

A. I was forced thereto by the power of the Lord.

Q. He is stiled, in Hannah Stranger's letter, The Fairest of Ten-thousand, The Hope of Israel, and The only begotten Son of God: dost thou so esteem him?

A. That James Nayler, of whom thou speakest, is buried in me, and he hath promised to come again.

Q. Dost thou like of that attribute, as given to him?

A. I cannot tell, I judge them not.

Q. Whether didst thou kneel before him?

A. What I did was in obedience to a power above.

Q. Dost thou own him to be the Prince of Peace?

A. He is a perfect man; and he, that is a perfect man, is the Prince of Peace.

Q. Hast thou a husband?

A. I have a man, which thou callest my husband.

Q. What made thee to leave him, and to follow James Nayler in such a manner?

A. It is our life to praise the Lord, and the

Lord my strength (who filleth heaven and earth) is manifest in James Nayler.

Q. Oughtest thou to worship James Nayler, upon thy knees?

A. Yea, I ought so to do.

Q. Why oughtest thou so to do?

A. He is the Son of Righteousness; and the new man within him is the everlasting Son of Righteousness; and James Nayler will be Jesus, when the new life is born in him.

Q. By what name callest thou him?

A. Lord.

Q. Why dost thou call him Lord?

A. Because he is the Prince of Peace and Lord of Righteousness.

Q. What reason canst thou shew for thy calling him king of Israel?

A. He is so anointed.

Q. Who hath anointed him?

A. A Prophet.

Q. What Prophet was that?

A. I will not tell thee.

Q. Thou confessest that thou didst spread thy cloaths?

A. Yea, I did.

Q. Tell me; doth that spirit of Jesus, which thou sayest is in Nayler, make him a sufficient Jesus to others?

A. I tell thee, there is seed born in him, which above all men I shall (and every one ought to) honour.

Q. Is he King of Israel, as thy husband saith?

A. If he saith so, thy testimony is double.

#### *Hannah Stranger's Examination.*

She saith, she came from Bristol to Exeter with James Nayler; and that she flung her handkerchief before him, because commanded so of the Lord; and that she sung Holy, &c. and that the Lord is risen in him.

Q. Wherefore didst thou sing before James Nayler?

A. I must not be mute when I am commanded of the Lord.

Q. Wherefore didst thou sing to him?

A. My conscience tells me I have not offended any law.

Q. Was that letter thine: and didst thou spread thy garments before him?

A. Yea, and my blood will maintain it.

Q. Dost thou own him for the Prince of Peace?

A. Yea, he is so.

Q. What dost thou call his name?

A. It hath been said already, I have told of his name.

Q. Dost thou not know it to be Blasphemy to give him such and such attributes?

A. If I have offended any law, &c.

Q. Didst thou send him that letter wherein he was called the Son of God?

A. Yea, I do own the whole letter.

Q. Didst thou call him Jesus?

A. [She would not answer.]

Q. Didst thou kiss his feet?

A. Yea.

*Thomas Stranger's Examination.*

He owneth the Postscript of the letter, in which he calleth James Nayler Jesus; but could not be got to answer to any more questions, any further than, If I have offended any law. He confesseth he called James Nayler Jesus, and saith he was thereto moved of the Lord.

*Timothy Wedlock's Examination.*

Q. Dost thou own James Nayler to be the only Son of God?

A. I do own him to be the Son of God.

Q. Wherefore didst thou and the rest sing before him, Holy, holy, holy, Lord God of Israel?

A. I do own the songs of Zion.

Q. Thou wilt go through a great rain bare-headed, Why then wilt thou not be uncovered to a magistrate?

A. What I did was as the Lord commanded.

Q. What is your opinion concerning Religion?

A. I own no opinions, nor any judgments.

Q. Wherefore didst thou honour him in towns, and not elsewhere?

A. We did as well in commons; but in both, as the Spirit of the Lord directed us.

Q. Wherefore didst thou kneel before him?

A. The truth.

*Dorcas Erbury, the Widow of William Erbury, once a Minister, but a seducing Quaker, her Examination.*

Q. Where dost thou live?

A. With Margaret Thomas.

Q. Wherefore didst thou sing Holy, &c.?

A. I did not at that time; but those that sang did it in discharging of their duty.

Q. Dost thou own him that rofe on horse-back to be the Holy One of Israel?

A. Yea, I do; and with my blood will seal it.

Q. And dost thou own him for the Son of God?

A. He is the only begotten Son of God.

Q. Wherefore didst thou pull off his stockings, and lay thy cloaths beneath his feet?

A. He is worthy of it; for he is the holy Lord of Israel.

Q. Knowest thou no other Jesus the only begotten Son of God?

A. I know no other Saviour.

Q. Dost thou believe in James Nayler?

A. Yea, in him whom thou callest so, I do.

Q. By what name dost thou use to call him?

A. The Son of God; but I am to serve him, and to call him Lord and Master.

Q. Jesus was crucified; but this man you call the Son of God, is alive?

A. He hath shook off his carnal body.

Q. Why, what body hath he then?

A. Say not the Scriptures, Thy natural body I will change, and it shall be spiritual?

Q. Hath a Spirit flesh and bones?

A. His flesh and bones are new.

Q. Christ raised those that had been dead; so did not he.

A. He raised me.

Q. In what manner?

A. He laid his hand on my head, after I had been dead two days, and said, 'Dorcas, arise; and I arose, and live as thou seest.

Q. Where did he this?

A. At the Gaol in Exeter.

Q. What witness hast thou for this?

A. My mother, who was present.

Q. His power being so much, wherefore opened he not the prison-doors, and escaped?

A. The doors shall open, when the Lord's work is done.

Q. What Apostles hath he?

A. They are scattered, but some are here.

Q. Jesus Christ doth sit at the right hand of the Father, where the world shall be judged by him.

A. He, whom thou callest Nayler, shall sit at the right-hand of the Father, and shall judge the world with equity.

Here followeth a Relation concerning one of his companions:

One of James Nayler's disciples, having attained to some knowledge in the French tongue, went over into France to a city called Bourdeaux, where, after entering into a congregation of the Protestants, he began, after his wonted manner here in England, to cry out, in the open congregation, against the minister, calling him conjurer, liar, impostor, deceiver; and the elders and people being astonished at the novelty, and reputing him a madman, came and told him that they had laws in France to protect the congregations, either of Papists or Protestants, from any disturbance; and thrust him forth of their church.

Upon which, he went into the church-yard, and, upon a stone, continued his discourse, which drew the whole congregation out of the church, after him, and caused the minister to give over; and the Elders, coming again to him, told him, that, he being a stranger, they were willing to favour him; but, seeing he did continue his disturbance, they would commit him to justice; he told them, justice was never in that place until his appearance.

Upon that, they took him away to the governor; where, being brought, with his hat on, he asked the governor what he was; who, told him, he was the governor of that place under the king of France: he said, That he would not answer him as governor, his government being carnal: and a certain bishop being with the governor, who was a Papist, desiring that he might question him, and demanding what he was, he told him, he was an Englishman, and sent of the Lord to prepare his way: he demanded of the bishop what he was; who told him, he was a bishop; whereupon he replied, That against him he was sent, who was one of the locusts that was sent forth of the bottomless pit; and that the weapons he

had with him were fitted to destroy him and the whole kingdom of Antichrist, who was held in darkness and blindness; and that he was to pour out vials of the Father's wrath upon him. The governor of Bourdeaux, perceiving several of the people to be infected with his doctrine, demanded if there was any ship ready to sail for England; which being informed of, he therein shipped him, being not willing to use extremity to a stranger, but caused some six or seven, who had been infected with his doctrine, to be whipped through the streets.

A relation concerning some others of the same tribe :

Seven or eight others went over in a vessel to New England, where, being arrived, they began to spread themselves; but the governor, having notice, caused them to be clapped up close in a castle, and would not suffer any to come to see them under penalty of five pounds: in the mean time, he sent for the master of the ship that brought them, and commanded him immediately to carry them back into old England, which he refusing, was also clapped up close prisoner, until he consented, and took them a-board again.

Now, reader, I shall close up all with a word or two of his life and actions :

James Nayler is a man of sq. erroneous and unsanctified a disposition, that it is hard to say, whether heresy or impudency beareth the greater rule in him; as will appear :

First, In what he testifieth before sufficient witnesses; see the Brief Relation of the Northern Quakers, p. 22, That he was as holy, just, and good, as God himself. And,

Secondly, That he, in a letter to one in Lancaster, expressly saith, That, he that expected to be saved by Jesus Christ that died at Jerusalem, shall be deceived: see Mr. Billingsly's Defence of the Scriptures, p. 16. The perfect Pharisee, p. 8. And so said another of that sect: he was not such a fool, as to hope to be saved by Jesus Christ that died at Jerusalem sixteen-hundred years ago: see Mr. Farmer's Mystery of Godliness and Ungodliness. Thus they glory in their ignorance, and count that foolishness which is the true wisdom.

Thirdly, In a letter I had in my possession, but now lent to a friend, subscribed by the Pastor, and other members of that congregation in the North, whereof Nayler once was a member, till, for his apostacy, he was excommunicated, it is offered to be proved, and by them testified to be true, that one Mrs. Roper, her husband being gone, on some occasion from her, a long voyage, this Nayler frequented her company, and was seen to dandle her upon his knee, and kiss her lasciviously; and, in that time of his society with her, she was brought to bed of a child, when her husband had been absent seven and forty weeks, to a day, from her; and, on a time, he was seen to dance her in a private room; and,

having kissed her very often, she took occasion to say, "Now, James, what would the world say if they should see us in this posture?" To which he said somewhat, but he was so low, that it could not be heard. This was objected against him, but he denied to answer it before the said church; objecting, That he would not speak to them, that spoke not immediately by the spirit.

Fourthly, In that, when I had discourse with him concerning perfect perfection, at the Bull and Mouth, he said, I was a liar to say he owned it; then I proved it from his own writings, as that he said, "They that say they have faith, and their life is not the life of Christ, and them that say they have faith, and yet they cannot be saved from their sins but in part in this world, them and their faith I deny, &c." To which, he hypocritically said, that I was a liar to say that he owned it in himself, though he disowned it in others. And, when I had objected any thing against what he said, he would deny it as soon as he had spoke it; which, to convince the people of his lying deceptions, I desired them that stood by me, to remember that he said, "All that are in the world are of the world," in direct opposition to that saying of Christ, John xvii, "I pray not, holy Father, that thou shouldest take them out of the world, but preserve them from the evil of the world;" which I presently accused him with, for which he called me liar: for he said, He said not so; I then desired them that heard him testify to the truth, against the liar and his deceit, which they did; but his seared impudence was such, that he said should a thousand say so, they were all liars; with much more to the like effect.

For his Character.

He is a man of a ruddy complexion, brown hair, and slank, hanging a little below his jaw-bones; of an indifferent height; not very long visaged, nor very round; close shaven; a sad down look, and melancholy countenance; a little band, close to his collar, with no band-strings; his hat hanging over his brows; his nose neither high nor low, but rising a little in the middle.

Something concerning some others of them also :

Disborough, not much inferior to Nayler himself, attempting to lie with one Rebecca (who was first seduced to be, and then was of their heresy) she asked him, what his wife would say if she should know what he attempted? Disborough replied, That he gave her the same liberty that he took himself (that was, to be a whore, as he was a whoremaster) but, in short, he having obtained his desire of her, she asked him, How if she should prove with child? He answered she must be content to be numbered with the transgressors, and to make her grave with the wicked (so that he followed not that light which is pure, but sinned against knowledge) as she, the said Rebecca, as bewailing her sin, confessed unto

one Mr. White, a Lincolnshire gentleman, to whom she added, That Nayler attempted to defile her also; so that, instead of perfect Saints, they are rather perfect sophisters.

This relation under the said gentleman's hand, and the aforementioned letter from the church, wherof Nayler was once a member, were offered to be proved and made good, in the public meeting at the Bull and Mouth to Nayler's face, more than once or twice, who was unable to say aught unto it. but left his standing, and sat down silent. They, that offered it so to public trial, were, one Mr. Persivall, and Mr. John Deacon, author of the Public Discovery of their Secret Deceit.

Some of their Opinions are these :

1. They deny the Scriptures are the Word of God.
2. They esteem their own speakings to be of as great authority.
3. They hold it unlawful to expound or interpret the Scriptures.
4. They say, that he, that preaches by a text of Scripture, is a conjurer.
5. That the holy Letter is carnal.
6. That the Bible ought to be burned.
7. That Jesus Christ inhabits in their flesh as man.
8. Some have said, that Christ never ascended into Heaven.
9. That to pray that their sins may be pardoned, is needless.
10. They believe not that there is another world.
11. Some of them deny the Resurrection.
12. That they cannot sin, but that they are perfect.
13. They make no distinction of persons.

A friend of mine being desirous of being resolved of a doubt; as, whether that which was reported, of that heretical sect, were more than they cried in, or less than they erroneously maintained contrary to the truth? He went unto their meeting, within Aldersgate, where he had no sooner entered that Synagogue of Satan, but the then Speaker (namely, George Fox) cried out, but on what occasion he knoweth not, Quakers, Quakers, Earth is

above God, in the open house, before hundreds then present. At which, my friend wondered, and pressing forwards a little into the multitude, he saw some disputing upon the same words; who demanding what was the matter, one answered, That George Fox said, Earth is above God; and here is one said, that whatsoever George Fox should do or say, he would maintain (pointing to a young man then standing by) to whom, my friend replied, he had undertaken a harder task, then he was able to perform: for God was the creator of the earth, and all things else; and therefore above the earth, and not the earth above him, that created it; forasmuch as the workman is above his work: for, although an artificer shall by art compose any thing, that is never so excellent, yet it can claim no equality with the maker, in regard that what is excellent in it, is the maker's excellency, and not its own: for, destroy the work, and the workman can make the like; but destroy the workman with the work, and both perish. To which he replied, He did not mean the earth under our feet, but earthly sin in man. To which my friend replied, that now his blasphemy was worse than it was before; for take the earth simply in itself, it hath no prejudice towards God; but sin is that, which seeks God's destruction, and therefore he was not to be conversed with, being of so diabolical an opinion.

One Stephens of London, being on a time at their meetings, with an intent to oppose what he should there hear not agreeing with truth; which, at his first coming, he did for a short time, till one of them, taking him by the hand, and rubbing his wrist very hard; which put him to very sore pain, and so altered his resolution, that he was so transformed by their enchantments, that he since confessed, that, should any one whatsoever have dared to oppose or resist them, as he just before did, he would have stabbed them to the heart, whatsoever had come of it.

There is one Stephens (and it is supposed, the same) a Quaker, that now lieth stark mad, and hath so been a pretty while, through the disturbances of that spirit, which ruleth in the old Quakers. JOHN DEACON.

201. The Trial of MILES SINDERCOME, alias FISH,\* before the Lord Chief-Justice Glynn, and Mr. Justice Warburton, at the Upper-Bench, Westminster, for High Treason: 8 CHARLES II. A. D. 1657.

January, 1657.

MILES SINDERCOME was committed close prisoner to the Tower of London, for High-

Treason; and sir John Barkstead, knt. lieutenant of the Tower, gave order to Mr. David Steer, one of the warders of the Tower, to be

\* "The principal person employed in the traitorous design, for the destruction of his highness's person, was a notable desperate fellow, named Sindercome, one who heretofore had been a quarter-master under sir John

Reynolds in the army, and was about two years ago cashiered by general Monk, among others in Scotland. He associated to himself one Cecil, and many others were engaged in the business. For the carrying on their work,

his keeper; with strict orders from the lieutenant to be most careful of him. But Mr. Steer perceiving the desperateness of his disposition, by many violent and threatening speeches, which he often used, acquainted sir John Barkstead therewith, and desired more assistance, as well for the security of his own person, as of the said prisoner. Wherefore, from that time forward, a guard of a commission officer and soldiers, were ordered to assist the said keeper, and secure the prisoner; so that Sindercome finding no means possible for him to make an escape by force, endeavoured afterwards to corrupt his keeper, offering him 200*l.* or so much as his place should be worth, to assist him in making his escape; and desired him, if he would undertake the matter, to furnish him with a black suit of clothes, a peruke, and a short dagger, to pass him through the water-gate, within the Tower, and said, that then he would trouble him no further, but kill any man that should oppose him in going. But his keeper faithfully discharging his trust, not only refused this proffer, but acquainted the lieutenant therewith; who was therefore more vigilant and careful for his security. The officers and soldiers that daily attended in his chamber with him, would often advise him to make his peace with God, and to look after the eternal concerns of his soul; which discourse he would always divert by the speaking of his own valour and courage, and how many he had slain while he was a soldier, boasting greatly therein, and of his knowledge in the law of this nation: and would often say, 'That he doubted not to make a very good defence, if he might be tried by a jury, according to the ancient law of England, and to come off as well as John Lilburne.'

Feb. 6, 1657, Miles Sindercome had notice of his Trial to be the next Monday following, and had liberty given to prepare himself for it; and for that purpose to send for, and converse with, what persons he would; and to have the use of pen, ink, and paper, and to write as he pleased; which he had, and did use accordingly.

Feb. 9, 1657, Sindercome was brought to his Trial at the Upper Bench Bar in Westminster-hall, the particulars whereof are as follow:\*

they held correspondence with some in Flauders, received directions thence from time to time, and for their encouragement, Don Alonso, the late ambassador of Spain in England, returned them over sums of money, with which they were enabled to proceed." See a Brief Relation of the late dangerous Plot. Printed in A further Narrative of the Passages of these Times in the Commonwealth of England, v. 7.

\* Thurloe, in a letter to Henry Cromwell, dated Whitehall, February 10, 1656-7, says:

"Sindercome was tried yesterday at the Upper Bench by a jury. His jury was a very substantial company of men, most of them being justices of the peace. The evidence was

The INDICTMENT was for High-Treason, to this effect, viz.

'That Miles Sindercome, alias Fish, and one William Boyes, with divers other rebels and traitors, against the Lord Protector, and Government of the Commonwealth; not having the fear of God in their hearts; but moved and seduced by the instigation of the Devil; on the 17th of September,† 1656, and divers other days and times, as well before as after, at Westminster, and divers other places in the county of Middlesex, falsely, maliciously and traitorously did conspire, compass, and imagine the death of the said Lord Protector; and to subvert and alter the government of the Commonwealth, and to raise war within the same.—For effecting whereof, 1. They took a room in the house of one Edward Hilton, and divers rooms in the house of one James Midhope, in Westminster; whither they brought guns, harquebusses and pistols, charged with leaden bullets, and iron slugs, to shoot, kill and murder him. 2. Jan. 1, 1657, they provided horses and weapons of war; and 3. Took a house and banqueting-house at Hammersmith, of one Henry Busby, for the same purpose. 4. Jan. 9, 1657, they conspired to burn Whitehall, where his Highness was in his own person; and to that end brought a basket filled with match, brimstone, gunpowder, and other combustible stuff and materials, and set the same on fire in the chapel there; to the great danger and disturbance of his Highness, and ill example of others, in contempt of the law, against their due obedience to his Highness and government, against the peace, and form of the statute, &c.

Thus far the Indictment.

Whereupon being arraigned, he pleaded Not Guilty, and for his trial put himself upon his country; and the issue being joined, there was immediately impannelled a jury of gentlemen of worth and quality to pass upon his life and death: he challenged several of them; and twelve being sworn, with his own consent, his Highness's Attorney-General (the Indictment being opened) proceeded to the Evidence, which was very full and clear, and two Witnesses at the least to all the points of the Indictment, with many aggravating circumstances: the particulars whereof are herein-after mentioned.

*The Evidence to prove the Indictment.*

There was one Troope of his Highness's Lifeguard, who was drawn into the business; and

most clear and full; and they found him guilty with [without] difficulty. He is to be executed to-morrow. He appears to be a most desperate fellow; and since his conviction, he would have poisoned himself to escape hanging." 6 Thurloe's St. Pap. 53.

† This was the first day of the meeting of the parliament.



he proved fully, 1. What person Sindercome is; how he inveigled him, the said Toope, with money in hand, and promises of more, and great preferment, to join with him to murder his Highness; saying, Spain could never obtain a peace with us, till he were taken out of the way. 2. The circumstances of time, place, means and manner designed for this murder. 3. That he, the said Toope, was to give notice when his Highness went forth; and at what end of the coach he sat. 4. Their buying and keeping of fleet horses. 5. Their intent to fire Whitehall, the fire-work placed in the chapel, and other circumstances. 6. Sindercome's resolution, if the fire did not take, to kill the Protector, whatever came of it.

Also one *John Cecil* proved the whole design of Sindercome and Boyes, how long it was in hand; that Sindercome engaged him, the said Cecil, in it; what words were used, how it should be done; what the consequence of the murder would be; the money provided, and that when it should have been done, he, the said Cecil, was designed to go to col. Sexby, and to share with Sindercome in his honour and profit. That the first thing agreed on, was to provide good horses. What moneys were paid by Sindercome; Sindercome's resolution to assassinate his Highness when he went abroad; and the manner how. That they were upon the road five or six times on purpose; and in Hyde-park with swords, and pistols charged, and had notice given them by Toope of his Highness's coming. That the hinges of Hyde-park gate were filed off in order to their escape. That they took an house with a banqueting-house at Hammersmith, to shoot him with guns, made on purpose to carry ten or twelve bullets at a time. That Toope was to give notice of his Highness's passing that way, and at which end of the coach he sat. That he, the said Cecil, saw one of the guns provided, which would carry twelve carbine bullets and a slug. He spake fully to the design of firing Whitehall; described the fire-work prepared, and the nature and intention of it, and other circumstances. Moreover, that Boyes assured them, that when the Protector should be dispatched, forces would come from Spain and Flanders; and a great part of the fleet would fall off. And that he believed Sexby to be the main agent herein at Brussels\*. He proved also the discourse

\* In col. Edward Sexby's Narrative, which he delivered to sir John Barkstead, lieutenant of the Tower, Oct. 12, 1657, printed in "A further Narrative of the Passages of these Times in the Commonwealth of England," p. 21, he says, "Sir John, I sent to you to tell you, that I am guilty of the whole business of Sindercome, as to the design of killing the Lord Protector, &c. and to that purpose I furnished Sindercome with about 500*l.* in money, and also with arms, and tied him to an engagement, that he should not reveal the design." And further he said, "The letters they have of mine, they could not prove them to be mine;

Boyes had about seizing Portsmouth, or some other port in the West, and of a great sum for that purpose. That thirty or forty are engaged in this design to kill the Protector, and it was so ordered, that not above two should know each other, until the matter should be ripe for execution; and that Boyes knew the whole number. He spake fully to that design to kill his Highness the first day of the parliament; and their taking houses for that purpose at Westminster; and bringing arms thither, and other circumstances\*. That Boyes goes by several names, and in several habits; sometimes as a poor priest in ragged clothes; sometimes well clad as a gentleman.

It was further proved by the said John Cecil, and col. James Midhope, that in order to the destroying of his Highness, he, the said Cecil, Sindercome, and Boyes, took the said Midhope's house near the Abbey at Westminster; and when they took it, Sindercome called himself John Fish, clerk to one Mr. Havers, a pretended gentleman of Norfolk; and Cecil went by the name of Mr. Havers's coachman.

It was proved likewise, that the first day of parliament, after they had taken Midhope's house, he being there: Sindercome and Cecil went thither to him, from one Edward Hilton, a Sempster's house in King-street, Westminster, where they left a great trunk full of arms, brought from Flanders; and carried with them in a viol-case, one harquebuss, and some pistols, charged with leaden bullets, and slugs, about sermon-time, to Midhope's house; which they found very convenient for their purpose, and resolved to buy it, and to build a room in the yard next the street; there being several back-yards and doors;† and resolved also to secure Midhope, or otherwise to deal with

but by my own confession, which I now confess, and acknowledge that they are mine. And that I was with Charles Stuart, and acquainted him, that I was an enemy to the Lord Protector; and I also declare that I received a large sum of money from the Spaniard to carry on my said design, and to make what confusion I could in England, by endeavouring the killing of the Lord Protector, and by what other ways I had in design; and to that end, the better to effect it, I came into England in a disguised habit, and was the principal in putting on others in the said design." And p. 22, he says, "That he was the only man, that set on Sindercome to kill the Lord Protector; and that book, called Killing no Murder, he owned: and said he was still of that judgment; yet said, it was both foolishly and knavishly done in that Book to charge the lieutenant of the Tower touching Sindercome's death." This colonel Sexby died a prisoner in the Tower, Jan. 13, 1658.

\* This Sindercome had engaged to kill general Monk in Scotland, and would have engaged the said Mr. Cecil therein also.

† Hilton deposed fully concerning the viol-case and trunk of arms.

him that he might not discover them, nor hinder their design.

It was proved, moreover, by *Cecil* and *Midhope*, that sermon being ended, all three of them, viz. he, the said *Cecil*, *Sindercome*, and *Boyes*, went into the yard of the house next the Abbey, to shoot his Highness, as he passed from the Abbey to meet the parliament in the Painted Chamber; and to that end, he, the said *Cecil* stood on the wall with his pistol charged, and *Sindercome* walked in the yard; but other company coming in thither, they were prevented, and *Boyes* went out of the yard into the throng of people.

It was further proved by *Cecil* that this enterprise not succeeding, they resolved to murder his Highness some other way, to wit, to furnish themselves with fleet horses, to kill him as he rode forth. That *Sindercome* engaged *Toope*, who constantly gave him notice of the Life-guards going abroad, or of the saddling of the Pad Nags. That the first time they rode forth to kill him, was the latter end of September last (viz.) the Saturday after he had left going to Hampton-court. That the second time was when he rode to Kensington, and thence, the back way to London. The third time, when he went to Hyde-park in his coach. The fourth time, when he went to Turnham-Green, and so by Acton home; at which time they rode forth to kill him, and resolved to break through all difficulties to effect it. The fifth time when he rode into Hyde-park, where his Highness alighting, asked him, the said *Cecil*, whose horse that was he rode on, *Sindercome* being then on the out-side of the park; and then *Cecil* was ready to have done it, but doubted his horse, having at that time got a cold. That *Sindercome* rode forth once himself to kill his Highness, and told *Cecil* of it. That all proving ineffectual, they resolved to desist till the Spring, and in the mean time to fire Whitehall. That the said *Cecil* put on a thin holland shirt, and thin clothes, for his better escape, when he rode forth to kill his Highness; and prepared his horse as if he had been to run a race.

To prove the taking of the house and banqueting-house at Hammersmith, of *Henry Busby*, coachman to the earl of Salisbury, there was beside *Cecil*, the testimony of *Henry Busby* himself, *William Page*, and *William Neal*, *Sindercome's* servant.

To prove the basket of stuff for fring the chapel, there was the testimony of *Cecil* and *Toope*, and others who were persons of quality.

To prove the buying and keeping of the horses, there was the testimony of *Henry Busby*, who sold them one horse for fourscore pounds; also of *William Page*, and *William Neal*, *Sindercome's* servant.

To prove the hinges of Hyde-park gate being filed off, and the pales cut, there was the testimony of *John Cecil*, and *Thomas Shell*.

The Prisoner seeing the Evidence so clear

against him, had nothing material to say for himself by way of defence, yet carried himself very insolent at the bar; and when the Court asked him touching any of the matters proved against him, he would confidently deny what was laid to his charge. And after all the Evidence given, and the prisoner heard what he had to say for himself; the court summed up the whole to the jury of Life and Death, and declared, that by the common-law, to compass or imagine the death of the chief magistrate of the land, by what name soever he was called, whether Lord-Protector or otherwise, is high-treason; he being the chief magistrate, and the spring of justice, in whose name all writs run, all commissions and grunts are made: and that the statutes of treason made 25 Ed. 3 as to this, did only declare what the common law was before the making of that statute and was not introductive of a new law;\* and more to that effect; and then proceeded to judgment against the prisoner in this manner.

#### The Sentence.

‘It is considered by the Court, that the said Miles *Sindercome*, alias *Fish*, be sent from hence to the prison in the Tower of London, from whence he came, and from thence be drawn upon a hurdle through the streets of London to Tyburn; there to be hanged on the gallows till he be half dead, and then to be cut down, and his entrails and bowels taken out, and burnt in his own sight, and his body divided into four quarters, and be disposed of as his Highness the Lord Protector shall think fit.’

The same day, after he was brought back again to the Tower, he was much enraged, and in a great passion; his keeper, and *Elizabeth Herring*, one of his sisters, being in the chamber with him, he did swear, ‘That they should never have his life,’ and then desired his keeper to help him to some poison, that he might make away himself; which he refusing, *Sindercome* then desired his sister to buy him some for the same purpose. But she crying at that present, gave him no answer; but taking her opportunity, when the keeper did not so much mind them, had some private discourse with him, which cannot be known what it was about. Presently after, his said sister left him, and before her going, spake to his keeper, saying, ‘Lord, what shall I do? Did you hear what my brother said of the poison?’ Thereupon, the keeper charged her not to bring him any, telling her, if her brother were poisoned

\* “*Sindercome* was tried at the Upper-Bench bar, found guilty, and condemned to be hanged, drawn, and quartered: the Court declared, That by the common-law, to compass or imagine the death of the chief magistrate, by what name soever he was called, whether Lord Protector or otherwise, is high-treason, and that the statute 25 Edw. 3, was only declaratory of the common-law.” *Whitelocke*.

in his house, he would accuse her for assisting him in it.

The Lieutenant of the Tower then being fully acquainted with the desperateness of Sindercome, commanded a file of soldiers to watch in the room below his chamber, and a guard of officers to be with him in his chamber, that all means for the making his escape might be prevented.

Sindercome the same day endeavoured to corrupt his keeper, as formerly, and with much earnestness prest him to be helpful to him in his greatest distress; and asked, if it were not possible for him to make an escape, telling him if he would assist him in it, he would make good unto him 200*l.* that night: And if he would go along with him he would make that 200*l.*, seven hundred pounds; or, what more he should desire; further requesting him to furnish him with a black suit, peruke, and dagger, for that purpose. But by reason that the officers aforesaid were in the chamber with him he had not liberty so freely to converse with his keeper about this business as he desired, and therefore earnestly desired the said guard of officers, and all in the chamber with him, to withdraw; in which time he wrote and delivered privately to his Keeper a note, whereof the next following words is a copy:

‘Mr. Steer; You see my condition, it is no time to dally with it; I have already provided 200*l.* for you; and if you will let me make my escape, and that you will go with me, or set me forth, I shall give you, were it 500*l.* more, I do not care; if you will do any thing, let me know your mind; I hope God will work my deliverance by your means; let me hear your judgment, that we may conclude; for if you and I do conclude, I will have other clothes brought into the room below, with a peruke, and I will take up a board (meaning, as is conceived, one of the boards of his chamber, to go down into the room below it, where his black clothes should lie; though therein he would have been frustrated, by reason of the file of soldiers, which the Lieutenant had commanded to watch there), and I do judge that must be the way. For God’s sake do what you can, and do not distrust my not performing to give you the money; for I can this night order you 200*l.* to any body that you shall appoint: but if you should—’

You may observe, that the reason of his breaking off so abruptly, was, that the guard of officers whom he had for that time desired to withdraw, finding that he made them stay somewhat longer than ordinary, prest in upon him, so that he had not time to write further. His keeper for answer, endeavoured to take him off from those thoughts, telling him the impossibility of it, and desired him to consider his present condition, and prepare himself for another world: whereupon Sindercome finding he could no ways prevail, moved these things no more afterwards.

From which time, several pious and able divines, some of which were appointed by his

Highness, and others that were desired by the Lieutenant of the Tower, daily came to him; as Mr. George Griffith, Mr. Thomas Brooks, Mr. John Hodge, Mr. Slater, Mr. Barker, and others. But before they or any others entered into discourse with him, he would wave all questioning of him about the business for which he was condemned: they laboured much with him for his soul’s good, but with no satisfaction to the greatest part, and with very little to others of them; he having before declared his judgment or rather opinion, by reason of his inconstancy and unsettlement in them, sometimes owning the universal point of redemption; at other times, that the soul died with the body, or slept with the body till the Resurrection, and then it may be it should rise; that by the grave hell was meant: with several other detestable tenets. And indeed there is scarce any erroneous opinion known in our times, that he had not a general notion of, and would pretend unto. In several of his discourses with those ministers he would not hear but that Judas was in as good a condition as Peter; and of that in the xvth of John, v. 12, where Christ saith, ‘While I was with them in the world, I kept them in thy name; those that thou gavest me I have kept, and none of them is lost but the son of perdition, that the Scripture might be fulfilled:’ he would say, it was meant to all men, who as they were sinners, were sons of destruction and perdition. And as to that text, speaking of the disciples, which saith, ‘one of them was a devil;’ he would startle and say, it was a rugged and harsh saying. He would often put it as a case to them, whether for any person to contrive the death of another, and not to act it, were punishable by man? And being as often resolved, and told of the law made in that case; he would answer that which they alledged was but the law of man, and that thoughts were not to be punished by man, but God who alone knew them.

Feb. 13. Afterwards he had notice given him, that the next day was appointed for his execution; and about eight o’clock that night, the guard of officers in his chamber, were captain Henry Sharp, captain-lieutenant William Foster, ensign Philip Brown, sergeant Nicholas Stock, and his said keeper. And presently after they came into the chamber, three women came to him, two whereof were Sindercome’s sisters, and the other one said to be his sweetheart, who expressed trouble and sorrow, lamenting his condition. And one of his said sisters, named Elizabeth Herrie, told him, ‘She had rather see him die before she went from him, than he should die so barbarous a death as was intended him, or to that effect: whereupon the officers minding her expressions, took what case they could to prevent her in giving him any thing; and as soon as the said women were gone carefully searched the room. Then Sindercome desired the officers and his keeper to withdraw, that he might be private: in which privacy, he continued about a quarter

of an hour, then came to the chamber-door, saying to the said officers that stood without, 'They might come in, for he had now done;' which words being not usual with him, were observed by most of them. The first that went in, found him rubbing his hands with his handkerchief, and wiping his nose and mouth therewith; and he walked a turn or two about the room, and then took the Bible and sat down reading therein. A while after, he started up suddenly, saying, 'He must go to bed;' and therewithal he undrest himself, and went into his bed. The said guard of officers in his chamber, being then discoursing together, Sindercome (a quarter of an hour after he had lain still) discoursed very freely with them of what they were talking. About which instant of time, orders were sent from sir John Barkstead, to the said officers, to be careful that he should not make away himself by poison,\* in regard it was the last night he was to be there; and they should diligently search all places of his chamber, and about his bed to prevent it. But presently after, Sindercome fell asleep (as was thought), and snorting somewhat unusually, one of the officers desired his keeper to take a candle and look upon him; which he did, and found him almost dead there, which prevented their further search. Whereupon a surgeon was immediately sent for, who applied medicines to him; notwithstanding which after he had continued in that condition speechless about two hours, he died †.

\* Sindercome had been an apprentice to a chirurgion, near St. Catherine's at the Tower, and so it was probable had more than ordinary knowledge of poisons.

† Lord Clarendon, speaking of the uneasiness and apprehension under which Cromwell passed the latter part of his life, says that "When he had discovered the design of Sindercome, (who was a very stout man, and one who had been much in his favour, and who had twice or thrice, by wonderful and unexpected accidents, been disappointed in the minute he made sure to kill him,) and had caused him to be apprehended; his behaviour was so resolute in his Examination and Trial; as if he thought he should still be able to do it; and it was manifest that he had more associates, who were undiscovered, and as resolute as himself; and though he (Cromwell) had got him condemned to die, the fellow's carriage and words were such, as if he knew well how to avoid the judgment; which made Cromwell believe that a party in the army would attempt his rescue. Whereupon he gave strict charge that he should be carefully looked to in the Tower, and three or four of the guard always with him day and night. At the day appointed for his execution, those troops Cromwell was most confident of, were placed upon the Tower-Hill, where the gallows was erected. But when the guard called Sindercome to arise in the morning, they found him dead in his bed, which gave a terrible exceeding to Cromwell; for besides

February 14. The Coroner's Inquest, consisting of merchants, and other substantial

that he hoped that, at his death, to avoid the utmost rigor of it, he would have confessed many of his confederates; he now found himself under the reproach of having caused him to be poisoned, as not daring to bring him to public justice; nor could he suppress that scandal. It appeared upon examination, that the night before, when he was going to bed in the presence of his guard, his sister came to take her leave of him; and upon her going away, he put off his clothes, and leaped into his bed, and said, 'This was the last bed he should ever go into.' His body was drawn by a horse to the gallows where he should have been hanged, and buried under it, with a stake driven through him, as is usual in the case of self-murder: yet this accident perplexed Cromwell very much, and though he was without the particular discovery which he expected, he made a general discovery by it, that he himself was more odious in his army than he believed he had been."

The following passage in the famous tract, published under the title of "Killing no Murder," seems to countenance the suspicion that Sindercome was dispatched by Cromwell. "My design is to examine, whether, if there hath been such a plot as we hear of, and that it was contrived by Mr. Sindercome against my Lord Protector, and not by my Lord Protector against Mr. Sindercome, (which is doubtful,) whether it deserves those epithets Mr. Speaker is pleased to give it, of bloody, wicked, and proceeding from the prince of darkness."

"This tract, *Killing no Murder*," says Harris, in his *Life of Oliver Cromwell*, "has been almost universally given to colonel Titus, but in a narrative touching col. Edward Sexby, (of whom there is an account in Clarendon, vol. 6, p. 640.) who [had] lately died a prisoner in the Tower, dated Jan. 20, 1657, O. S. it is said, That he owned the book called "*Killing no Murder*," and said he was still of that judgment." See *Mercurius Politicus*, No. 399, p. 254. *Thurloe*, vol. 6, p. 560. The passage in 6 *Thurloe*, is as follows:

The Information of Thomas D'Oyley, Daniel Steere, and John Hoskins, taken October 14, 1657.

Say, that they were this day at the chamber of col. Edward Sexby, in the Tower of London, together with sir John Barkstead, knight, and Mr. Joseph Caryl, minister, where the said col. Edward Sexby did then and there acknowledge before them all, and own the confession he had before made before the said sir John Barkstead, upon Monday last, being the 19th instant; and said, it was all truth: but withal said, it was very indiscreetly done of him to own the letters at Whitehall, which were charged upon him for his, as he did then acknowledge them to be all his, before he had

housekeepers of the Tower liberty, had in charge to inquire of the manner of Sindercome's death,

which they diligently attended; and all such witnesses as could speak materially thereunto

again seen and perused them. And touching Sindercome, the said col. Sexby said, he was the only man, that put Sindercome upon the design to kill the Lord Protector; yet now says, he is much troubled, he should be so unwise to make that confession upon Monday aforesaid, because, he said, none could else have forced him to it: so, as he saith, he hath wilfully cast away his own life thereby; but yet said, he should be a mad rogue indeed, if he should go about to cast away the lives of others. And therefore as to the confederates, he was unwilling to discover other persons: yet this, he said, he could say, that he is sure they will not meddle any further in the said design, having had their undertaking so frustrated, and seeing plainly, that God was against them. And as touching the books intitled, "Killing no Murder," &c. he said, he owned them as his own work, and was still of that judgment: and said, he might have destroyed the Protector, because he was not chosen nor set up by the people; but that now the case was altered, the parliament having settled the government on him. He confessed, he had correspondence with the Spaniard, and received money from them to carry on his said design against the Lord Protector, but discovered not the sum. As to that passage in the said books, charging sir John Barkstead with having smothered Sindercome in his pillow and sheets, he said, it was foolishly and knavishly done by him in so writing. He saith further, that he hath some of those books in London which he understands are burnt; and he hath 250 of them in Holland. And also said, he was taken in July; yet, he said, the books were made, before the Lord Protector was settled by parliament. And being urged, upon what account he came over, since the act of parliament? and whether it was not to carry on the same design of killing the Protector, notwithstanding his former expression, 'The case was altered, the parliament having settled the same on him?' he presently seemed to fall into his former distraction and wild speeches, and appeared unwilling to discover any further.

JOHN HOSKINS, [his mark].

THOMAS D'OYLEY.

DANIEL STEERE. ✱

According to Clarendon's representation of Sexby, it is very little likely that he composed that most able, logical, artificially constructed, and occasionally eloquent treatise. Clarendon calls Sexby a man who for an illiterate person spoke very well and properly, and used those words very well, the true meaning and signification, whereof he could not understand. Mrs. Macaulay, probably from a careless perusal and indistinct recollection of Harris's account, says that, "according to Clarendon, colonel Edward Sexby, of the party termed Levellers, an old intimate of Cromwell,

before Cromwell usurped the government, asserted, that he was the author." Clarendon says nothing of "Killing no Murder" or of its author.

Of the style and spirit of "Killing no Murder" a judgment may be formed, from the Prefatory Addresses to the Protector, and to the Army:

"TO HIS HIGHNESS OLIVER CROMWELL.

"May it please your Highness;—How I have spent some hours of the leisure your Highness hath been pleased to give me, this following paper will give your Highness an account; how you will please to interpret it I cannot tell, but I can with confidence say, my intention in it is, to procure your Highness that justice nobody yet does you, and to let the people see, the longer they defer it, the greater injury they do both to themselves and you. To your Highness justly belongs the honour of dying for the people, and it cannot chuse but be an unspeakable consolation to you, in the last moments of your life, to consider with how much benefit to the world you are like to leave it. It is then only, my lord, the titles you now usurp will be truly your's; you will then be indeed the deliverer of your country, and free it from a bondage little inferior to that from which Moses delivered his: you will then be that true reformer, which you would now be thought: Religion shall then be restored, liberty asserted, and parliaments have those privileges they have fought for; we shall then hope that other laws will have place besides those of the sword, and that justice shall be otherwise defined than the will and pleasure of the strongest; and we shall then hope men will keep oaths again, and not have the necessity of being false and perfidious to preserve themselves, and be like their rulers: all this we hope from your Highness's happy expiration, who are the true father of your country: for while you live, we can call nothing ours, and it is from your death, that we hope for our inheritances: let this consideration arm and fortify your Highness's mind against the fears of death, and the terrors of your evil conscience, that the good you will do by your death, will somewhat balance the evils of your life. And if, in the black catalogue of high malefactors, few can be found that have lived more to the affliction and disturbance of mankind, than your Highness hath done, yet your greatest enemies will not deny, but there are likewise as few that have expired more to the universal benefit of mankind, than your Highness is like to do. To hasten this great good is the chief end of my writing this paper; and if it have the effects I hope it will, your Highness will quickly be out of the reach of men's malice, and your enemies will only be able to wound you in your memory, which strokes you will not feel. That your

were examined by the coroner. And although there were then very strong presumptions that

he had poisoned himself; yet in regard the surgeons, who had then only opened his body,

Highness may be speedily in this security, is the universal wish of your grateful country; this is the desire and prayer of the good and of the bad; and it may be, is the only thing within all sects and factions do agree, in their devotions, and is our only common prayer. But amongst all that put in their requests and supplications for your Highness's speedy deliverance from all earthly troubles, none is more assiduous nor more fervent than he, that, with the rest of the nation, hath the honour to be,

May it please your Highness,  
Your Highness's present slave and vassal,  
W. A."

"To all those OFFICERS and SOLDIERS of the ARMY, that remember their Engagements, and dare be honest.

"I heartily wish, for England's sake, that your number may be far greater than I fear it is; and that his Highness's frequent purgations may have left any amongst you, that by these characters are concerned in this dedication. That I and all men have reason to make this a doubt, your own actions, as well as your tame sufferings, do but too plainly manifest. For you that were the champions of our liberty, and to that purpose were raised, are not you become the instruments of our slavery? And your hands that the people employed to take off the yoke from our necks, are not those the very hands that do now put it on? Do you remember that you were raised to defend the privileges of parliament, and have sworn to do it? and will you be employed to force elections, and dissolve parliaments, because they will not establish the tyrant's iniquity and our slavery by a law? I beseech you, think upon what you have promised, and what you do, and give not posterity, as well as your own generation, the occasion to mention you with infamy, and to curse that unfortunate valour, and success of yours, that only hath gained victories, as you use them, against the Commonwealth. Could ever England have thought to have seen that army, that was never mentioned without the titles of religious, zealous, faithful, courageous, the fence of her liberty at home, the terror of her enemies abroad, become her gaolers? not her guard, but her oppressors? not her soldiers, but a tyrant's executioners, drawing to blocks and gibbets all that dare be honest than themselves? This you do, and this you are; nor can you ever redeem your own honour, the trust and love of your country, the estimation of brave men, or the prayers of good, if you let not speedily the world see you have been deceived; which they will only then believe, when they see your vengeance upon his faithless head that did it: This, if you defer too long to do, you will find too late to attempt, and your repentance will neither vindicate you, nor help us. To let you see you may do this as a lawful action, and to persuade you to it as

a glorious one, is the principal intention of the following paper; which, whatever effects it may have upon you, I shall not absolutely fail of my ends; for if it excites not your virtue and courage, it will yet exprobate your cowardice and baseness. This is from one that was once one amongst you, and will be so again when you dare be as you were."

In the work, the author after an introductory notice of Sindercome's business, and the congratulations of the Parliament to the Protector, on his happy deliverance from that wicked and bloody attempt, proceeds to consider three questions, 1. Whether my Lord Protector be a tyrant. 2. Whether, if he be, it is lawful to do justice upon him without solemnity, that is, to kill him. 3. If it be lawful, whether it is likely to prove profitable to the Commonwealth. Each of these questions he determines in the affirmative. He closes his work thus:

"To conclude this already over long paper, let every man, to whom God hath given the spirit of wisdom and courage, be persuaded by his honour, his safety, his own good and his country's, and indeed the duty he owes to his generation, and to mankind, to endeavour, by all rational means, to free the world of this pest. Let not other nations have the occasion to think so meanly of us, as if we resolved to sit still and have our ears bored, or that any discouragements or disappointments can ever make us desist from attempting our liberty, till we have purchased it, either by this monster's death, or by our own. Our nation is not yet so barren of virtue, that we want noble examples to follow amongst ourselves. The brave Sindercome hath shewed as great a mind as any old Rome could boast of; and, had he lived there, his name had been registered with Brutus and Cato, and he had had his statues as well as they.

"But I will not have so sinister an opinion of ourselves, (as little generosity as slavery hath left us) as to think so great a virtue can want its monuments even amongst us. Certainly, in every virtuous mind there are statues reared to Sindercome. Whenever we read the eulogies of those that have died for their country; when we admire those great examples of magnanimity that have tired tyrants' cruelties; when we extol their constancy, whom neither bribes nor terrors could make betray their friends; it is then we erect Sindercome statues, and grave him monuments; where all that can be said of a great and noble mind, we justly make an epitaph for him: and though the tyrant caused him to be smothered, lest the people should hinder an open murder, yet he will never be able either to smother his memory, or his own villainy. His poison was but a poor and common device, to impose only on those that understood not tyrant's practices, and are unacquainted (if any be) with his cruelties and falsehoods. He may therefore, if he please,

and finding no usual symptoms accompanying the taking of sharp poisons, could not positively deliver their opinions, otherwise than hereafter is expressed, the jury deferred the giving up their verdict till Monday following.

The same day afterwards, at the desire of the lieutenant of the Tower, sir Richard Napier, doctor of physic, and Dr. Fern, reader of anatomy at Gresham college, opened Sindercome's head, and gave their opinions thereof also. Which was likewise afterward viewed by Mr. Charles Stamford, Mr. Nicholas Brethens, wardens to the company of surgeons; and Mr. Lawrence Loe; all able and knowing persons in their profession, which remain with the said coroner under their hands.

"February 14, 1657. Being then desired by sir John Barkstead, knt. lieutenant of the Tower, to see the head of Miles Sindercome opened, his body having been opened before our coming by the surgeons, and to give him our observations and sense thereof:

"We found the brain much inflamed, red, and distended with blood, swollen as full as the skull could well hold; besides much grumous and clotted blood out of the veins, which must be the effect of some very violent and preternatural cause. Yet are we not able positively to determine what that 'is or whence it did proceed, the motion being much more

take away the stake from Sindercome's grave; and, if he have a mind it should be known how he died, let him send thither the pillows and feather-beds with which Barkstead and his hangman smothered him. But, to conclude, let not this monster think himself the more secure that he hath suppressed one great spirit;\* he may be confident that 'longus post illum sequitur ordo idem petentium decus.'

"There is a great roll behind, even of those that are in his own muster-rolls, and are ambitious of the name of the deliverers of their country; and they know what the action is that will purchase it. His bed, his table, is not secure, and he stands in need of other guards to defend him against his own. Death and destruction pursues him wherever he goes; they follow him every where, like his fellow-travellers, and at last they will come upon him like armed men. Darkness is hid in his secret places, a fire not blown shall consume him; it shall go ill with him in his tabernacle that is left†. He shall flee from the iron weapon, and a bow of steel shall strike him through; because he hath oppressed and forsaken the poor; because he hath violently taken away a house which he built not. We may be confident, and so may he, that ere long all this will be accomplished; for the triumphing of the wicked is but short, and the joy of the hypocrite but for a moment. Though his Excellency‡ mount up to the heavens, and his head reaches unto the clouds, yet he shall perish for ever like his own dung. They that have seen him shall say, Where is he?"

sudden and violent than that of Apoplexies, and other known diseases of the brain, except when caused by contusion, and other the like extraordinary violences.

RICHARD NAPIER,  
CHRISTOPHER FERN."

"We, whose names are here subscribed, being ordered to open the body of Miles Sindercome, prisoner in the Tower of London, do hereby declare, according to the best of our judgments and experiences, that we could not find out or discover any, the usual or common symptoms or effects, accompanying the taking of known and sharp poisons causing sudden death; but by the distention and swelling of the brain, and vessels in the head, with much coagulated blood which we found there, more than in ordinary diseases, our opinions are, that the said prisoner hath caused the same by some extraordinary means, for the hastening of his death.

CHARLES STAMFORD, } Wardens.  
NICHOLAS BRETHERS, }  
LAURENCE LOE."

February 15, 1657. Being Sabbath-day, Sindercome's keeper, with others, having removed the body out of the chamber where he died, into a more airy place, and taken several things out of that chamber, removed the close-stool, and under it was found a paper subscribed with his own hand as followeth:\*

"God knoweth my heart, I do take this course, because I would not have all the open shame of the world executed upon my body; I desire all good people not to judge amiss of me; for I do not fear my life, but do trust God with my soul. I did this thing without the privity of any person in the world: I do, before God and the world, clear my keeper, my sisters, mother, or brother, or any other of my relations, but it was done alone by myself. I say by me, the 13th day, 1657.

MILES SINDERCOME."

February 16, 1657. The jury sate again according to adjournment, to whom the aforesaid testimonies of the physicians and surgeons, and also Sindercome's own note were apparent; so that they did then unanimously resolve and agree, that he, by some extraordinary means, had caused his own death; and that they verily believed the same to be by poison. But for their further direction, as to the formal part of their verdict, they at that time deferred the giving of it, and adjourned till seven o'clock the next morning, at the Lord Chief-Justice's house, where they accordingly met; and having received his lordship's direction touching matter of form, did all unanimously agree on, and give up their Verdict, to the effect following:

"February 17, 1657. *Middlesex ss.* We find that upon the 13th day of February, in

\* "It is printed to a title just as he wrote it himself." Original Narrative.

the year of our Lord, 1657, about the hour of nine in the night, Miles Sindercome, otherwise Fish, late of the parish of Peter in Bonds, in the county of Middlesex; God not having before his eyes, but by the instigation of the devil being moved and seduced, at the Tower of London, in the parish and county aforesaid, feloniously, wilfully, and of his malice towards himself, aforethought, as a felon against himself, then and there feloniously upon himself did make an assault. And that the said Miles Sindercome, otherwise Fish, then and there, certain poisoned powder, through the nose of him the said Miles, into the head of him the said Miles, feloniously, wilfully, and of his malice towards himself aforethought, as a felon of himself, feloniously did snuff and draw. By reason of which snuffing and drawing of the poison aforesaid, so as aforesaid, into the head of him the said Miles Sindercome; he the said Miles Sindercome, by the strength and operation of the poison aforesaid, himself did mortally poison; of which said mortal poisoning, he the said Miles Sindercome, otherwise Fish, within three hours after died. And so we find that the aforesaid Miles Sindercome, otherwise Fish, the said 13th day of February, in the year aforesaid, at the Tower of London aforesaid, in the parish and county aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice towards himself aforethought, as a felon against himself, feloniously himself did kill and murder. We find no goods or chattels, that the said Miles Sindercome, otherwise Fish had, at the time of the felony and murder aforesaid, in manner and form aforesaid, upon himself done and committed. In witness hereof, we have hereunto set our hands, this 17th day of February, 1657, &c."

And thereupon the said Coroner issued forth his warrant for the burial of Sindercome, the copy whereof followeth:

"*Middlesex* ss. Whereas the jury impanelled and sworn to enquire of the death of Miles Sindercome, otherwise Fish, did present upon their oaths, that the said Miles, the 13th of this instant February, did feloniously poison himself: these are therefore in the name of his highness, the Lord Protector of the Commonwealth of England, Scotland, and Ireland, to require you to bury the corpse of the said Miles Sindercome, according to law, in the next common highway. Hereof you are not to fail, as you will answer the contrary at your perils, dated the 17th day of February, 1657.

THOMAS EVANS, Coroner."

To the Constables and Headboroughs within the Liberty of the Tower of London.

On the same day, February 17, Miles Sindercome aforesaid, being found to have murdered himself, his body was according to law drawn to the open place upon Tower-hill, at a horse's tail, with his head forward, and there under the scaffold of common execution a hole

being digged, he was turned in stark naked, and a stake spiked with iron, was driven through him into the earth; that part of the stake which remained above ground being all plated with iron.

The Examination of Elizabeth Herring, the Wife of William Herring, of the Precinct of St. Catherine's, Mariner; taken upon Oath, the 14th of February, 1657.

She saith, that Miles Sindercome now dead was her brother, and that he was a prisoner in the Tower of London the space of three weeks last past, or thereabouts, to her knowledge; and that for the space of a fortnight she was at the Tower several times to see the said Miles, and could be admitted but once to see him, until the 5th day of February, she this informant was sent for to come to the said Miles. When she came to the said Miles, she found two gentlemen in the room with him; who, as soon as this informant came in, did say unto the said Miles Sindercome, that he was not to speak any thing in private to this informant; then this informant came away. And that she came several times after to the said Miles; that on Monday the 9th of this instant February, she came to the said Miles after he had received sentence to die; and lamenting his condition, she said, that he would bring his mother's gray hairs with sorrow to the grave, and what an open shame it would be to him and all his friends. The said Miles Sindercome then did answer, saying, that before they should have his life so shamefully (meaning his highness the Lord Protector, as this informant believeth) he would poison himself first, and desired her, this informant, to buy him some poison, which she refused. And that at times when this informant hath been with the said Miles, she did see some strange faces which she did not know, and that she came every day since Monday, once a day or more to the said Miles: and saith, that he the said Miles did not speak any more words to her of any poison, or any other words of discontent, as if he intended to destroy himself; and that he never did complain to this informant of any sickness or diseases that he was troubled withal. And that on Friday, the 13th of this instant February, she being alone with the said Miles Sindercome, did persuade him to confess who had a hand with him in the plot against his highness the Lord Protector; that if he would confess, his Highness would grant him his life, and wished him to trust to God and man; and the said Miles answered, he would have it under black and white, and that he would trust no man. And that about eight of the clock at night she parted from the said Miles, and left him in good health, being prepared to die, as she thought; and that he found in his own conscience he had made his peace with the Lord: and this informant denieth that she ever brought him any poison, or bid buy any other thing to destroy him; yet confesseth that on Friday night she did say unto the said Miles, that she desired with all her heart, to



see him die a natural death in that chamber. And further saith not.

The mark of 2 Elizabeth Herring.

The Information of Martha Wickham, Spinster, taken upon Oath, as aforesaid.

She saith, that she hath known Miles Sindercome for the space of four years last past, and that he lodged at the house of Daniel Stockwel, haberdasher of hats on London-Bridge, where this informant lived; and that the night before he was taken into custody, and imprisoned, he lay at his lodging in the said house. And this informant denieth, and saith, that she doth not know any of the company that used to come to the said Miles, while he lodged there; and saith, that she hath been several times to see the said Miles at the Tower of London, while he remained there; and saith, that she doth not know of any poison, or any other violent thing, which was brought or sent to the said Miles Sindercome, to destroy himself; and further saith not.

MARTHA WICKHAM.

The Information of Anne Pierce, Wife of Stephen Pierce, of Deptford, in the County of Kent, Mariner, taken upon Oath, as aforesaid.

She saith, That she was several times to see Miles Sindercome, the time he was in the Tower: Saith, That she doth not know of any poison, or any other violent thing that was brought to the said Miles to destroy himself; and she did never hear the said Miles speak any words, as if he intended to destroy himself by poison, or any other way: And further saith not.

The mark of A ANNE PIERCE.

Middlesex ss. The Information of William Foster, taken upon Oath, the 14th day of February, 1656, before Thomas Evans, gent. one of the Coroners of the county of Middlesex.

He saith, That on, Friday, the 13th of Feb. about nine of the clock at night, he was in the chamber where Miles Sindercome, otherwise Fish, lodged, within the Tower of London; saith, That the said Miles Sindercome did desire this informant, and four more that were with him, that they would withdraw out of the chamber whilst he went to prayers; and within less than a quarter of an hour after, he called in this informant, and those that were with him, into the chamber again; and a quarter of an hour after that, the said Miles did take a book into his hands to read, and said, that he would go to bed, and that that was the last night he should go into a bed, and the last bed he should go into. And then he lay down in his bed, and, to this informant's thinking, fell asleep, and snored. And this informant desired Daniel Steer, Miles Sindercome's keeper, to take a candle, and to see how the said Miles did lie in his bed; and the said Daniel Steer did tell this informant, that the said Miles Sindercome, alias Fish, was almost

dead as he lay in the bed; but the said Miles Sindercome did lie in that condition speechless the space of two hours, and then died.

The mark of F WILLIAM FOSTER.

The Information of Philip Brown, taken upon Oath, as aforesaid.

He saith, that on Friday, the 13th day of February, about ten of the clock in the forenoon, he was with Miles Sindercome, otherwise Fish, in his chamber, and staid there at dinner; and in the same time, while that they were at dinner, the said Miles Sindercome did say these words, that that was the last meal's meat that ever he should eat, as he thought. And after, two of the said Miles's sisters, a cousin, and another gentlewoman with them, came to see the said Miles, and did then persuade him, the said Miles, to confess to them, and to declare whom they were, who had brought him into those troubles, and sorrows that he was like to undergo. And he answered them, saying, to whom should he confess? He could not expect mercy from him, who was resolved to give him none; saying, that Cromwell said to him, when he was taken and brought before him, Sindercome, have I caught you? You that have sought many ways to take away my life, I will have no consideration at all of thy life. And when he had uttered these words, he was in a great passion, and said, that he might go and declare against the lord Fleetwood, the lord Lambert, sir John, Barkstead, sir Thomas Pride, or any other member of the army, if he were minded to destroy innocent blood. And about seven of the clock that day, orders were brought to this informant from the major, that the said Miles Sindercome might have some time allowed him a-part, to prepare himself, if he desired it. And this informant went out of the chamber, and left the said Miles alone; and a quarter of an hour after, this informant standing at the chamber door, did see the said Miles kneeling on his knees on the ground by the bed-side, and presently after one of the centinels that stood at his chamber-door, did tell this informant, that the said Miles did cough and kick, as if he was a vomiting; and this informant opened the chamber-door, and went in, and found the said Miles walking about the chamber. And capt. Foster, and capt. Sharp, who were ordered to be there that night, then came into the room; and about nine of the clock at night, the said Miles did desire this informant, and the other company that were there, to withdraw out of the room, and about a quarter of an hour after, he called them in again; and the said Miles did then take a book into his hand to read, and said, that he would go to bed, and that that was the last night he should ever go to bed, and the last bed he should lie in: and then said him down in his bed. And then capt. Sharp did desire Daniel Steer, the said Miles's keeper, to see how he did lie in his bed; and the said Daniel Steer looking upon the said Miles, did say unto

this informant, and the rest there, that the said Miles was almost dead : and yet the said Miles Sindercome did lie in that condition the space of two hours, and then died.

The mark of B Philip Brown.

*Middlesex ss.* The Information of Daniel Steer, gent. taken upon oath as aforesaid.

Saith, that about the end of January, Miles Sindercome, alias Fish, being a prisoner in the Tower of London, under the custody of sir John Barkstead, knight, having some discourse with this informant who was his keeper, did then say unto this informant, that if he would be faithful to him,\*the said Miles, he would give him to the value of his place, what it was worth, were it a hundred or two of pounds ; and desired him, this informant, if he would undertake the business, and accept his proffer, to provide him the said Miles a black suit of cloaths, a peruke, and also a short dagger, and to pass him out of the Water-gate, and he would kill any man that should oppose him ; and the same day that he was at his trial, being the 9th of this instant February, after he came back again to the Tower, the said Miles was in a great passion, his sister Elizabeth Herring being then in his company ; he the said Miles then did swear, that they should not have their ends (meaning as this informant believeth, that the sentence pronounced against him that day should not be executed). And then the said Miles Sindercome did desire this informant to help him to some poison, that he might make away with himself ; and this informant refusing to do any of those things which he desired, the said Miles then did speak to the said Elizabeth Herring, his sister, who was there, to bring some poison ; but she the said Elizabeth crying, gave him no answer. And afterwards the said Miles, and the said Elizabeth, had some private discourse together in the room, which this informant did not hear. And the said Elizabeth parting from the said Miles, came down stairs, and did speak to this informant, saying, Lord, what shall I do, did you hear him what he said of the poison ? And this informant answered, that he did hear what he said, and wished her not to bring him any ; and further said to the said Elizabeth Herring, that if the said Miles was poisoned while he continued in this informant's house, that he this informant answered, he would charge her the said Elizabeth with helping the said Miles to poison. And then the said Elizabeth went away from this informant ; and this informant went up into the chamber to the said Miles Sindercome ; who asked this informant, if it was not possible for him to help the said Miles to make an escape now in his great distress : and further said, that if this informant would do it, he would make good to him 200*l.* this night ; and then said, that if he this informant would go along with the said Miles, when he escaped, he would make that 200*l.* 100*l.* or what more he should desire ; further requiring earnestly this informant to help him

to a black suit, and a peruke. This informant then said to the said Miles Sindercome, that it was impossible for him to make an escape, there being such strict guard kept about him ; and had no further discourse at that time. And that on Friday, the 13th day of February, about ten of the clock at night, this informant then was with the said Miles in his chamber, together with captain Henry Sharp, captain-lieutenant William Foster, ensign Philip Browne, serjeant Nicholas Stock : And the said Miles did desire this informant, and the rest of the company, to withdraw out of the room, which they did ; and about a quarter of an hour after, he the said Miles did desire them to come again into his chamber : he walking a turn or two about the room, did take into his hand a bible to read in ; and a while after, he started up suddenly from the place where he sat, saying, he would go to bed, that that was the last time he should go to bed, and the last bed he should lie in. And when the said Miles had lain a while in his bed, he fell asleep, and snorted, and after that he had a rattling in his throat, and this informant was bid to take a candle, and see the said Miles as he lay in his bed ; and when this informant had looked upon the said Miles, he found him almost dead as he lay in his bed. And this informant being further asked, if he knew of any poison, or other means, which the said Miles did use to take away his life, saith, That he did not see any, neither doth he know any more touching the said Miles's death, but what he hath already decared in this information.

DANIEL STEER.

The Information of Henry Sharp, gent. taken upon Oath, as aforesaid.

Saith, That between seven and eight of the clock on Friday night being the 13th of Feb. being in the chamber with Miles Sindercome, otherwise Fish, three women, whose names this informant doth not know, came crying into the chamber to the said Miles, lamenting his condition ; the said Sindercome then reading in a bible, did so continue reading about half an hour, while the said three women were there. One of the said women said to him, the said Miles, that she would be glad to see him dead in the room before she went from thence, rather than to have him die such a barbarous death as was appointed for him to die. And after they were gone out of the room, this informant caused Daniel Steer, the said Miles's keeper, to search the bed and the room, lest any thing might be left there for the said Miles to hurt himself withal ; and the room being searched, nothing was found. And also upon enquiry of the said Steer, this informant found that all instruments were taken from him ; only the said Steer brought him up a knife to cut his meat withal, and carried it away when he had done. And that about half an hour after, he the said Miles desired this informant, and the rest of the company that were with him, to withdraw

out of the room; and about a quarter of an hour after, he called them into the chamber again, and took a book into his hand to read in it, and after a little time, he said he would go to bed, and lie down in his bed; and he hearing this informant and captain Foster talking together, the said Miles talked very freely with him; and in the time of their discourse together, there came a messenger to this informant from sir John Barkstead, requiring this informant to have a special care of the said Miles Sindercome, otherwise Fish, that he did not poison himself. This informant did declare unto the other that were there, what order he had received for the said Miles; and about a quarter of an hour after, this informant hearing him the said Miles snore, desired Daniel Steer, the said Miles's keeper, to see how the said Miles did then. The said Daniel taking a candle to look on the said Miles Sindercome, did tell this informant that he was almost dead; yet the said Miles did live in that condition, speechless, the space of two hours after, and then died.

HENRY SHARP.

The Information of Elizabeth Sindercome, of Deptford, in the County of Kent, Widow, taken upon Oath, the 14th of Feb. 1656.

She saith, That she was three several times to see Miles Sindercome, her son, while he was prisoner in the Tower of London; and saith, she doth not know of any violent means or ways used by the said Miles Sindercome, or any other, to hasten his death; neither did she ever hear him speak any words to that purpose: And that the last time she was with the said Miles, he did then tell her, this informant, that he was prepared to die. And that two Ministers being then in the chamber with him, she had no further discourse with him, or did see him any more, until on Friday night, about twelve of the clock, she did hear she was sent for; and did hear that he was very sick and weak, of which sickness he died presently after; and further saith not.

The Mark of 2 ELIZABETH SINDERCOME.\*

\* Mrs. Macaulay says, "Cromwell could never sift the bottom of Sindercome's design, or detect any of his accomplices; and though the intention of assassination was fully proved on his trial, yet it was with difficulty that the jury could be brought to condemn him. On the morning destined for his execution, he was found dead in his bed of poison he had voluntarily taken, as it was given out by the friends of Cromwell; but his enemies did not scruple to assert that Sindercome was smothered, to prevent the probable mischief which might ensue from a public execution. That despicable convention of Cromwell's adherents, who called themselves a parliament, were not sparing of their adulation on the occasion: They ordered a day of thanksgiving, to be first held by the house, and then by the three nations; they voted thanks to secretary Thurloe for his great diligence in tracing out the plot; and,

VOL. V.

Some light is thrown on this business, by the following Examinations published in *Thurloe*:

The Examination and Information of John Toop, taken this 9th of Jan. 1656, [taken by Secretary Thurloe.]

Saith, that about eight or nine weeks since, one Miles Sindercome, who was a soldier in the army, and was cashiered, as this examinant hath heard and believes, in Scotland for some disturbance, which was designed in the army, about two years since, came to his lodging, and fell into discourse with him about the affairs of the nation; saying, there was a design to alter the government, and to that end take away the life of the Lord Protector. And the discourse was such, that the examinant believed he was paid, and set on work by the king of Spain; for he said, that it was better for this nation to be in league with Spain, than with France; which he said could never be; and that Spain could never obtain a peace with us, till this tyrant was taken away; and told this examinant, that if he would engage therein, he should be made for ever; and for his own part, he said, he was sure to be a colonel of horse within half a year; and promised to this examinant, that he should have a troop, and also 1500*l.* in money, when the Protector should be killed.

He further said, that it was better to have Charles Stuart to reign here, than this tyrant. And at the several meetings, which the examinant had afterwards with the said Sindercome, he told him, that they would attempt to kill the Protector upon the road, as he went to Hampton-court, assaulting him to that purpose, when he was on horse-back; and that there was five of them besides this examinant, who knew of this design, and were engaged to effect it. And said, that he and Cecil had been several times upon the road to endeavour the killing him; but found not their opportunity. He further said, that they had hired a house in Hammersmith, where Mr. Frevill heretofore lay, which by reason of its standing upon the road, was very convenient for their purpose; and it having a little house upon the wall, their intention was to shoot the Protector as he passed by, out of the little house, with scrued guns, which were prepared on purpose, which should break the coach in pieces, and kill him where he sat. And spoke to this examinant, to give them notice, when the Protector went forth, and at what end of the coach he sat. And being asked, who the five persons were,

with the Speaker at their head, they went to Whitehall to congratulate the Protector in person on his happy deliverance. The Speaker concluded his speech with observing, that if Cicero was living he would want expression to set out the danger or the mercy; so unparalleled, so unprecedented a mercy, that the parliament's hymn was, 'O Cantemus Confitemur: O come, let us sing a new song unto the Lord.' Vol. 5, p. 193.

3 K

who should do this execution, he said, he never told him, nor doth he know any of them, but the said Sindercome himself, and John Cecil, which this examinant never saw but once before this week. And saith, that Sindercome told him, that when they had done the fact, their horses were ready in the stable to escape away on the backside of the house.

This examinant further saith, that Sindercome acquainted him with an intention they had to fire Whitehall, saying, that it was so strong a place, and so many turnings and windings therein, that it was the fittest hile for a tyrant to live in it; and if that were burned, there is never another place in England where he could hide and secure himself; and to that purpose the said Sindercome had provided a firework in a hand-basket (made, as he said, by one that came over from beyond the seas on purpose to make it) and brought it to the lodgings of this examinant, upon this day se'nnight, and thereupon this examinant and he came down together to view what place could be best to place the firework in; and they looked upon a place or two over against captain Rolt's chamber, and the said Sindercome tried with a key he had in his pocket to open a door thereabouts, but could not; and from thence went towards the chapel, and thought to have laid it at the head of the stairs, which comes the back way into the chapel, but resolved not fully of it: this was upon this day se'nnight; whereupon this examinant, the same day, seeing things growing so far, waited to have discovered it to his Highness, but found not means of access to him.

The next day after, the said Sindercome came to the examinant's lodging, and took away the firework, and carried it to Cecil's lodgings; and upon Tuesday after, Sindercome and this examinant met at the sign of the Ben Johnson's in the Straud, where they discoursed of the same business, and of the manner of killing the Protector, and he said, they would fire down Whitehall, and then defer the other business until the spring. He further said, that he should have money come by the next Monday from Flanders.\*

Upon Thursday after, they met again in the morning at this examinant's lodging, and told him he and Cecil had agreed to lay the firework in the chapel, and appointed a meeting to execute it at five o'clock that night. In the mean time this examinant acquainted his Highness with it, and so they met at five o'clock, and came all there together to the place, to see if all things were as they would have it; and then Sindercome and Cecil went back, and brought with them the firework, and Cecil opened the door of the chapel, and Sindercome put in the firework, this examinant and Cecil standing by to see that nobody came to discover them.

He, this examinant, being asked, whether they had no intention to fire any other place, saith, that he knew not; but saith that Sindercome told him, they had another firework in a box, but knoweth not where it is.

This examinant further saith, that Sindercome told him, that if the fire did not take, he was so far engaged in this business, that he himself would set upon the Protector to take away his life, whatever came of it.

And being further asked, if he received any money of Sindercome in part of what he promised him, saith, that about eight or nine weeks ago, he received of the said Sindercome, the sum of 5*l*., about a week after that 5*l*. more, about a month since 5*l*. more; and upon this day se'nnight 4*l*. more; which is all the money he, this examinant, received of the said Sindercome, or any other person, for the purpose aforesaid.  
JOHN TOOR.

The Examination of John Cecil; taken this 9th of January, 1656, [taken by Secretary Thurlboe.]

Saith, that about four months since, one Miles Sindercome, heretofore a soldier in the army, came to this examinant, and told him, that there was a design in hand amongst some very considerable persons, whose names he could not reveal to him, for killing the Lord Protector, which he acquainted this examinant with, to persuade him to engage therein; alledging that now there was a parliament called of the Protector's own naming, having kept out some, and let in others at his pleasure; and that it would be a very acceptable service to take him off, whereby things would come to a confusion; it being certain, that the great ones of the king would never agree, who should succeed, but would fall together by the ears about it, and then in that disorder the people would rise, and so things might be brought to a commonwealth again. And he further said, that there was no attempting him in the field, nor other way, but by falling upon his person at an advantage. And this examinant asking, how they should be able to bear the charge of such attendance, the said Sindercome answered, that money should be provided, in case they could effect their business. This examinant was to escape over sea to col. Sexby, who was to provide for him, and was to have a share in all such honour and profit, which Sindercome should have for this service. Upon these and such like discourses this examinant engaged to join in this work, viz. to attempt and kill the Lord Protector. And the way which was first agreed upon, was to provide good horses, and to attempt him as he went upon the road; for which purpose this examinant bought several horses, one of the earl of Salisbury, which cost him 80*l*.; which horse is now at Cobham with John Clarke, who lives at the house of Thomas Christmas; another horse he bought of one Morgan at Cashalton, which cost him 75*l*., and is now at the said Morgan's. He bought another of Mr. Vanbrooke, cost him 42*l*., which he sold again. He bought another of Mr. Harvey by the hands of the said Morgan, cost 34*l*., which he delivered to Mr. Sindercome. He bought another of Cluffe the

horse-seller for 30*l.*, which he sold again. And saith, that the money to pay for these horses he had of Sindercome. And when these horses were bought, the intention was to have made a party of horse of about forty to have assaulted him. But that proving a difficult business to get so many in<sup>to</sup> together, it was resolved to be done by a lesser party; and Sindercome and this examinant did agree to take the first opportunity to assassinate the Protector when he went abroad, and to do it as he either came out of his coach to take his horse, or as he did alight from his horse to go into the coach; and one Toop, who is one of the Protector's life guard, whom the said Sindercome had engaged to serve them in this attempt, was to give them notice when the Protector went abroad. And he saith, that he and Sindercome were upon the road about five or six times, on purpose to have made this attempt, and had notice of the Protector's going abroad by the said Toop; and saith, that he was mounted upon the black horse he bought of Morgan, and Sindercome upon the bay horse he bought of the earl of Salisbury; but they had not opportunity to effect their design. And saith, that he himself went once into Hyde-park, with an intention to have attempted there, having a sword and pistol to that purpose, which were the only arms that he and the said Sindercome rid with, being confident, that if he could come near him, he could have done it, and escaped after by the goodness of his horse. And saith, that there was a gate in Hyde-park, the hinges and hooks whereof were filed almost asunder, on purpose that they might have the better escaped. And he says, that he believes he could have rid his black horse one hundred miles without drawing bit, and ten miles of it with that speed, that he could have left behind him most horses in England, that were not kept. This examinant further saith, that this way proving not effectual, there was a resolution taken to hire a house upon the way to Hampton-court, out of which they might shoot him as he went by in his coach. And accordingly the said Sindercome took a house at Hammer-smith, at this end of the town on the right-hand as we go from London, where there is a garden-wall, and upon the wall a banqueting house, which is upon the street, out of which the intention was to shoot him, as he came by, with guns made on purpose for that business, which should carry twelve or more bullets at a time, and Toop was to give them notice when the Protector went that way, and at which end of the coach he sat. And saith the guns were prepared, one whereof he saw, and was like a harquebus, and would carry about twelve bullets and a slug. And this business was chiefly directed by one Boyes, who was much with Sindercome, and is a man of somewhat a low stature, and small boned, brownish hair curling to flaxen, sanguine complexion, and wore his beard long. Being asked where the said Boyes lodged, and what he was, he saith he cannot tell, nor could ever learn, but often went be-

tween this place and Flanders, and that he is now gone thither. And this examinant further saith, that at the same time they had a design to fire Whitehall, and a firework was prepared for that purpose, made up in a hand-basket, with two matches hanging out of each side of above a yard long, which he supposeth was made by the said Boyes, who hath great skill in fireworks; and that this firework when it was made ready, was left at Toop's quarters, Sindercome and Toop having been about it for a good while, and had viewed several places where they might put it in, and Toop undertook to place it himself; and as Sindercome told this examinant he had 20*l.* given him for it, which if he had performed, this examinant believes he had not known of it till it had been executed; but it not being done it was communicated to him about five or six days since, and about Saturday last it was carried from Toop's lodging to the lodging of this examinant in King-street, and yesterday the said Sindercome, Toop, and this examinant met at the Bear in King-street, and there they resolved to bring the said firework, and put it into the chapel, and they came together between five and six o'clock in the evening of yesterday: they came together to the chapel door, and finding all things to their mind, this examinant and Sindercome went back to this examinant's lodging, lighted the match, and brought it with them; and this examinant having opened the door, Sindercome laid it in, and so locked the door again. It was about six o'clock when they laid it in, and they conceived it would have fired about twelve o'clock, or between twelve and one in the night. And being asked what issue they expected of this, said, that at least it would have had this effect, that their party would have been satisfied that they were not idle, but were at work to accomplish what they had designed.

And this examinant further saith, that Boyes did assure them, that when the Protector was dispatched, forces were to come over from Flanders in ships, to be hired of the Dutch with the king of Spain's money, and that then also a great part of the fleet would fall off; but saith he cannot tell the particulars of these things, but hath heard and believes that col. Sexby is the man, that doth agitate these affairs at Brussels.

And he saith, that Boyes hath had much discourse about a port town to be procured and seized upon, where forces might be landed, and they expressed much desire to have Portsmouth or Plymouth, or some place in the west where also there was shipping to be seized upon; and said, that a very great sum of money was to be given to have such a place; but he is not able to say, whether they have any assurance of any such thing, but thinks they have not as yet. But doth believe that their design is going on for taking away the life of the Protector, and that this deficiency will not hinder the prosecution thereof; and that he believes there are thirty or forty men engaged therein,

and they will order it so, that not above two shall know of one another, until it be ready to be executed, only there shall be one person, who shall know the whole number; and this person, he thinks, is Boyes. This examinant further saith, that there was a design to take away the Protector's life the first day of the parliament, as he went thither, and there was a trunk of blunderbusses and scrued guns carried into a chamber at a sempster's shop in King-street, on the left hand of the street as we go to Westminster, taken by Boyes for that purpose, the intention being to shoot the Protector as he went by in his coach: but it appearing that there was not any possible way of escaping out of the house, they were discouraged from that enterprise. Then they hired part of an house, which is next to the east door of the abbey-church, and on the right hand, thinking to shoot him as he went from the sermon to the parliament-house: they hired it of a colonel, who knew nothing of the business, he keeping only a room or two himself; but they having not time to make conveniences, and finding so many people standing on both sides the way, before the Protector came by, and as he passed, they durst not do any thing, for fear of being discovered before they shot; but saith, that house stands so conveniently, both for escaping after the fact, and for all other purposes, that it is resolved to make use of it upon the next occasion, if they can get the

colonel quite out of it, which they will endeavour to do, and then will fit all things for the purpose. And being asked where money is had for managing those things, he saith, he is not able to say that; it is Boyes, who provided it all. And saith, that he heard Boyes say, that the Protector had got some of their money, but that they should be supplied with more. And being asked, what chief persons in England they relied upon for carrying on the business, saith, that he believes, that col. Overton was the chief, but that he was in prison.

And being further asked about the design of killing the Protector the day he went to the parliament-house, he saith, that he was engaged by Boyes, to be one that should shoot, being brought acquainted with him by Sindercome, and that Sindercome was another; and believes, that they three were all to be present; and saith, that he this examinant saw one blunderbuss at the house by the abbey, which was to be used for the purpose aforesaid. He further saith, that there is one major Wood, who was formerly an officer in sir William Waller's army, who is one of this party, and doth often go between this country and Flanders; but he is not acquainted with any particular business, that he doth or hath transacted.

JOHN CECILL.

See also 6 Thurlow's State Papers, pp. 7, and 90.

## 202. The Trial of Sir HENRY SLINGSBY<sup>\*</sup>, knt. before the High Court of Justice, for High Treason: 10 CHARLES II. A. D. 1658.

THE High Court being set, and the names of the Commissioners being called, the serjeant at

arms was commanded to fetch the prisoner to the bar. Sir Henry Slingsby was brought ac-

<sup>\*</sup> After mentioning Mr. Mordaunt's acquittal, lord Clarendon proceeds: "Sir Henry Slingsby, and poor Dr. Hewet, had worse fortune; and their blood was the more thirsted after for the other's indemnity; and the court was too severely reprehended, to commit the same fault again. The former had lain two years in prison in Hull, and was brought now up to the Tower, for fear they might not discover enough of any new Plot, to make so many formidable examples, as the present conjuncture required. They had against him evidence enough (besides his incorrigible fidelity to the crown from the first assaulting it) that he had contrived, and contracted with some officers of Hull, about the time that the earl of Rochester had been in Yorkshire two years before, for the delivery of one of the block-houses to him for the king's service: nor did he care to defend himself against the accusation; but rather acknowledged, and justified his affection, and owned his loyalty to the king, with very little compliment, or ceremony to the present power. The other, Dr. Hewet, receiving no information of

Mr. Mordaunt's declining the way formerly resolved upon (which it was not possible to convey to him in that instant, nobody being suffered to speak with him) and being brought to the bar as soon as the other was removed from it, persisted in the same resolution, and spoke only against the illegality of the court; which, upon better information, and before the judgment was pronounced against him, he desired to retract, and would have put himself upon his trial: but they then refused to admit him; and so sentence of death was pronounced against them both; which they both underwent with great Christian courage.

"Sir Henry Slingsby, as is said before, was in the first rank of the gentlemen of Yorkshire; and was returned to serve as a member in the parliament that continued so many years, where he sat till the troubles begun; and having no relation to, or dependence upon the court, he was swayed only by his conscience to detest the violent and undutiful behaviour of that parliament. He was a gentleman of a good understanding, but of a very melancholic nature,

cordingly to the bar. Then proclamation made for silence, and the commission for trial of the

and of very few words: and when he could stay no longer with a good conscience in their councils, in which he never concurred, he went into his country, and joined with the first who took up arms for the king. And when the war was ended, he remained still in his own house, prepared and disposed to run the fortune of the crown in any other attempt. And having a good fortune and a general reputation, had a greater influence upon the people, than they who talked more and louder; and was known to be irreconcilable to the new government; and therefore was cut off, notwithstanding very great intercession to preserve him. For he was uncle to the lord Falconbridge; who engaged his wife and all his new allies to intercede for him, without effect. When he was brought to die, he spent very little time in discourse; but told them, 'he was to die for 'being an honest man, of which he was very glad.'

"Dr. Hewet was born a gentleman, and bred a scholar, and was a divine before the beginning of the troubles. He lived in Oxford, and in the army, till the end of the war, and continued afterwards to preach with great applause in a little church in London; where, by the affection of the parish, he was admitted, since he was enough known to lie notoriously under the brand of Malignity. When the lord Falconbridge married Cromwell's daughter, who had used secretly to frequent his church, after the ceremony of the time, he was made choice of to marry them according to the order of the church; which engaged both that lord and lady, to use their utmost credit with the Protector to preserve his life; but he was inexorable, and desirous that the churchmen, upon whom he looked as his mortal enemies, should see what they were to trust to, if they stood in need of his mercy.

"It was then believed that, if he had pleaded, he might have been quitted, since in truth he never had been with the king at Cologne or Bruges; with which he was charged in his indictment; and they had blood enough in their power to pour out; for, besides the two before-mentioned, to whom they granted the favour to be beheaded, there were three others, colonel Ashton, Stacy, and Bettely, condemned by the same court; who were treated with more severity; and were hanged, drawn, and quartered, with the utmost rigour, in several great streets in the city, to make the deeper impression upon the people, the two last being citizens. But all men appeared so nauseated with blood, and so tired with those abominable spectacles, that Cromwell thought it best to pardon the rest who were condemned, or rather to reprieve them; among whom Mallory was one, who was not at liberty till the king's return; and was more troubled for the weakness he had been guilty of, than they were against whom he had trespassed."

prisoner read. Proclamation for silence again was made. Then Mr. Attorney-General Pri-deaux exhibited a Charge of High-Treason against sir Henry Slingsby the prisoner; which was read: the substance of which Charge was as followeth, viz.

'That the town of Kingston upon Hull, in the county of Kingston upon Hull, in England on the 11th of October, 1656, and ever since, unto the day of the exhibiting of this charge, was and hath been, and is yet, a town belonging to this Commonwealth; where there is a garrison, and a great part of the army and forces belonging to this Commonwealth: that sir Henry Slingsby, late of Redhouse, in the county of York, knight, minding and intending to inbroil this Commonwealth in intestine wars, the 30th of April last, and divers times since the 10th of October 1656, and before the said 30th of April last, as a false traitor and enemy then and yet to his highness Oliver, Lord Protector of these nations, together with one Robert Gardiner and Edward Chapman, and with one William Smith, of the said county of York, gentlemen, and divers others, did traitorously, advisedly, and maliciously combine together, and plot and contrive to betray and yield up the said garrison of Hull unto Charles Stuart, eldest son of the late king Charles, now an enemy to this Commonwealth.

'That the said sir Henry Slingsby, by like traitorous combination, the said 30th of April last, and divers times after the said 10th of Oct. 1656, did traitorously and maliciously plot, and contrive, and endeavour to stir up mutinies within the said garrison, to withdraw Ralph Waterhouse, John Overton, George Thompson, &c. officers of the same, from their obedience to his highness Oliver Lord Protector.

'That then and there, and at divers other times, as well before as after the said 30th of April last, and after the said 10th of October, 1656, he the said sir Henry Slingsby did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir and raise up forces against Oliver Lord Protector, and against the government of this Commonwealth, as the same is established, and to alter the same.

'That the said sir Henry Slingsby did traitorously, &c. then and there declare, publish, and promote the said Charles Stuart to be king of England, Scotland, and Ireland, and the dominions thereto belonging, and held correspondence with him. All these things the said sir Henry Slingsby, at Kingston upon Hull aforesaid, did maliciously, &c. carry on by conferring with the said officers how to effect the aforesaid treason, and encouraging the said officers thereto by promising to them, and every of them, rewards and sums of money to join with him in the treason aforesaid, and by delivering to the said Ralph Waterhouse, one of the officers of the garrison, a certain instrument under seal, which the said sir Henry Slingsby said was from Charles Stuart,

and did purpört to be a commission from th  
said Charles Stuart, to him the said Ralp  
Waterhouse, to be governor of the castle. A  
which said treasons are contrary to the statut  
in that case made and provided. With whic  
treasons the said Attorney-General, on beha.  
of the Lord Protector, &c. doth charge th  
said sir Henry Slingsby, and prays that th  
said sir Henry Slingsby may be put to answe  
thereto; averring that the said sir Henr  
Slingsby is the person by name appointed b  
his highness the Lord Protector to be tried an  
proceeded against. Signed May 25, 1658.

EDM. PRIDEAUX.

Lord President. (Lisle) Thou here standes  
charged for High Treason: this Court requires  
that thou give a positive answer, whether Guilty  
or Not Guilty.

Sir Henry Slingsby. I desire to have counsel  
assigned me

Ld. Pres. There is matter of fact laid to  
your charge, which amounts to treason; and  
there is no law allowed in matters of fact.

Slingsby. There is also matter of law: and I  
desire to be tried by a jury, which is according  
to the law of the land.

Ld. Pres. We are all here your jury, as wel  
as your judges: we are the number of two or  
three juries. And your jury is well known;  
for they are chosen by the parliament. You  
are to plead to your Indictment.

Slingsby. I desire to know whether there can  
be any conviction, unless it be by confession?

Ld. Pres. If you had looked upon the act of  
parliament, that would have told you: it speaks  
of Examination of Witnesses; it speaks of  
your confession and answer, and of your de-  
fault; and if you do not plead to it, it will  
be very penal to you.

Slingsby. If it be by the laws of the land,  
that the trial should be by a jury, I desire I may  
have that privilege.

Ld. Pres. Acts of parliament make justice  
and law: they are both. They think fit to  
change the custom of trials that have been in  
former times, and all persons must submit to  
it. And the parliament hath thought fit to  
make this court both Jury and Judges.\* And  
therefore I require that you answer, whether  
Guilty or Not Guilty.

\* "April 27th, 1658. The Commissioners  
of the Seal and of the Treasury, the Judges and  
many others were nominated Commissioners  
under the Great Seal for the trial of the pre-  
sent conspirators against the Protector and  
Governor; and Whitelocke was one of them,  
but he never sate with them, it being against  
his judgment.—June 30th, 1658. According  
to Whitelocke's former advice to the Protector,  
wherein Thurloe agreed, divers others of  
the new Conspirators were referred to be tried at  
the Upper Bench Bar after the course of the  
Common Law." Whitelocke's Memor. See  
Dr. Hewet's Case, *infra*. See what Hume says  
of the use of the High Court of Justice in the  
Note to the Case of Gerard and others, *supra*.

Slingsby. I desire that the act of parliament  
may be read.

Ld. Pres. You are before your jury and  
judges. Parliaments have great care of the  
rights of the people, and have appointed this  
Court; and his Highness hath appointed you to  
be tried by us; you ought therefore to plead  
to your indictment.

Slingsby. The law gives liberty in case of  
juries to the party accused, to make his ex-  
ceptions against the jury; which he cannot do  
here, where you are both judge and jury.

Ld. Pres. If you have any particular excep-  
tion to any man, you may make it: you were,  
Sir, of the parliament when this act was made.

Slingsby. I was a prisoner at the same time.

Ld. Pres. Although a prisoner, yet you are  
bound by act of parliament.

Mr. Phelps, Clerk. You have heard your  
charge read, and plea demanded: the Court  
again requires of you that you give a positive  
answer, whether Guilty, or not.

Slingsby. I am, my lord, of an opinion  
(though you account it a paradox), that I  
cannot trespass against your laws, because I  
did not submit to them.

Ld. Pres. All the people of England must  
submit to the laws of England, to the authori-  
ties of England; all must submit to my Lord  
Protector and acts of parliament. We sit  
here by authority of his Highness, by a com-  
mission under the Great Seal of England, and  
by authority of parliament; and you must  
submit to our authority.

Slingsby. The laws have been so uncertain  
with me, that I could not well know them;  
and when I was a prisoner, I could not take  
notice of them: I could have no benefit by  
your laws, because that is no law to me which  
doth not give me interest and property to what  
I have. It is the benefit of laws, that they do  
distinguish between *meum* and *tuum*: but  
when you take all from me, in my case it is  
not so.

Attorn. Gen. (Prideaux.) He may enjoy  
as much benefit by the laws as any, if he have  
not forfeited it; and I desire he may be put to  
answer.

Ld. Pres. The Court again require you to  
plead to your Indictment.

Slingsby. Not Guilty.

Mr. Phelps. Your plea then is, That you  
are Not Guilty? To which sir H. Slingsby  
answered, Yes.

Mr. Lechnere. Mr. Attorney-General hav-  
ing exhibited a Charge of High-Treason against  
his gentleman, sir H. Slingsby, the prisoner at  
the bar, the Charge doth set forth, That the  
own of Kingston upon Hull, October 11, 1656,  
and ever since, to the time of exhibiting the  
Charge, was a town of this Commonwealth's;  
and that within that town, in all that time,  
here is and hath been a garrison, and part of  
the army of this Commonwealth, and during  
that time, Ralph Waterhouse, John Overton,  
George Thompson, &c. were officers of the  
forces of that garrison. That sir H. Slingsby,



minding to embroil the Commonwealth in war; April 30 last, and divers other times since October 10, 1656, as a false traitor and enemy to his highness the Lord Protector, did plot, contrive, and endeavour to betray the said town and garrison to Charles Stuart, an enemy to this Commonwealth. It sets forth further, That sir H. Slingsby, the time and place aforesaid, did contrive and endeavour to stir up mutinies among the soldiery of that garrison, and to raise forces against this Commonwealth; and that he did publish and declare the said Charles Stuart to be king of England, Scotland, and Ireland, &c. and hath held correspondence with him; and that he delivered to the said Ralph Waterhouse a certain instrument, which he said was a Commission from Charles Stuart: All which treasons are contrary to the form and effect of the act of parliament. And the prisoner having pleaded Not Guilty, which plea is recorded, we are ready to prove him guilty, and ready to call our witnesses.

*Att. Gen.* You have heard the Charge, and plea Not Guilty; it rests upon us to prove it to you. This gentleman himself, I believe, when he hath heard them particularly opened, will be convinced that of these acts he hath been guilty. It would not have been expected from him to have tasted of the mercy of this Court: For had he had justice done formerly, he had not been to have answered this here. I do believe it was expected from those that did govern, to have got him off by mercy, not to take him off by justice. But he ceased not to interpose on the behalf of Charles Stuart, and endeavoured to bring him in again, and had like to have withdrawn the faithful officers of that garrison to betray their trust: If money would have done it, that was not wanting to be offered; if preferment would have wrought upon them, that was proffered; if hopes of higher preferment under Charles Stuart would have wrought upon them, it would have been done. But to our witnesses.

*Ralph Waterhouse sworn.*

*Att. Gen.* What discourse had you with sir Henry Slingsby, touching the delivering up of Hull?

*Waterhouse.* I had several discourses with him; particularly about the latter end of December last, being a-hunting, sir Henry Slingsby's son came to me in the field, and told me his father presented his service to me, and gave me a book; which I looked on about an hour after, and found it was a printed book. At the beginning was a Paper thus written, 'Put this out with your finger, and then tell me whether Rob. Gardiner had not spoke to me to 'serve the king,' &c. Presently after I acquainted col. Smith, who advised me to discover, if I could, whether sir H. Slingsby was carrying on any plot. I went to sir H. Slingsby, and sir H. S. took me to the window-side, and hugged and embraced me; and asked me if Robert Gardiner had not spoke to me to serve the king: And then began with a great many good

words, and said that one (meaning his Highness) had put a disrespect upon me, and if I would I might right myself; with many other words; and promised me a sum of money, to secure the South-house for the service of the king. About a week after, he sent the book again, and in the same leaf wrote a few lines more, which I also shewed to col. Smith; he promised me 5,000*l.* in land or money here or elsewhere. I made many queries, and told him I thought it was to no purpose: He told me, that if that house were secured, in a little time he would bring an army to besiege Hull, and then half our work would be done. He after sent me another paper, which was to this purpose, That if the governor sought for him, he would give security for his peaceable living; and said, if I would give him a piece, he would make it twenty if he did not procure me a Commission from Charles Stuart within fourteen days. He said further, That a great party were engaged in Scotland. Upon the 2nd of April he delivered me a Commission, which he said was from the king; and the Commission being read in Court, the said Mr. Waterhouse averred it to be the same he received of sir H. Slingsby, and which ran thus:

'C. R. Charles by the grace of God,' (with the old usual title, &c.) 'To our right trusty and well-beloved major Ralph Waterhouse: We do by these presents constitute and appoint you to be governor of the castle and two block-houses near Hull, and to put such a garrison of horse and foot therein, as you shall judge necessary for the defence of the same; and to command the garrison and governor thereof, and to do all things necessary for the preservation of the same place. Given at Bruges, March 12, 1657.'

Sir H. Slingsby also said to me, That he had spoken with captain Overton, and promised to furnish him with money to lay in provision, and engaged by a bond to repay such money as I should lay out for the victualling of the South-house: and also read a letter from Charles Stuart, running thus, 'I can never be enough sensible of your favours,' &c. I demanded how the army should come; he answered, that the duke of York had 7 or 8,000 men, that the king of Spain would furnish them, if there was a place of security. And asking what way of correspondence he had with C. Stuart, he said he had a way of having Commissions from C. Stuart, which he would not discover. [Here sir H. Slingsby stood up, and disowned any such expression.]

*Att. Gen.* What officer were you, Mr. Waterhouse?

*Waterhouse.* I have the command of a company, and of the South block-house.

*Att. Gen.* Mr. Waterhouse, what letter was that sir H. Slingsby sent to his son?

*Waterhouse.* The contents were thus: 'That Harry would speak to the two men to be very importunate with the twelve.' Sir H. Slingsby promised so many men, that he offered captain Overton 20*l.* to raise forty

*Att. Gen.* How many men did he tell you should be at Paul near Hull?

*Waterhouse.* Six hundred to march into Hull.

*Att. Gen.* What men did he tell you Andrew would raise?

*Waterhouse.* He said Andrew would raise 50 or 60 men when he pleased, and that captain Overton should have a deputation to command the castle under me; he said he had good hopes of col. Smith, and that he had a Commission for him, if he would accept of it.

*Slingsby.* This which is here spoken in seriousness, was then spoke in mirth, a mere discourse, as those that are in good fellowship may have, and what I said or did was but in jest.

*Ld. Pres.* There ought to be no good fellowship in Treason.

*Waterhouse.* I never visited him but by col. Smith's commission. Sir H. Slingsby according to his engagement, upon receipt of a piece, gave me another Commission running thus: 'Oliv'er, Lord Protector, &c.' took it again, and burned it.

*Att. Gen.* Sir Henry, was it you that filled up that blank Commission.

*Slingsby.* It is more than any man knows: But it is not the Commission I gave Waterhouse, which is dated March 12, 1657.

*Capt. John Overton sworn.*

Mr. Phelps shewed him the Commission dated 12 March, 1657.

*Mr. Att. Gen..* Did you see that Commission delivered to Waterhouse by sir Henry Slingsby?

*Capt. Overton.* Yes, I did; he delivered it to him in the Castle about the second of April last.

*Slingsby.* Mr. Overton, what date did that Commission which I then delivered bear?

*Overton.* This is the same Commission, and (having it in his hand) I here see it is dated 12 March, 1657.

*Slingsby.* I deny that the Commission I then delivered did bear that date.

*Waterh. and Overton.* 'My Lord, we are upon our oaths.

*Overton.* I saw sir H. give it to major Waterhouse in his own chamber in the Castle of Hull, and major W. bid me read it, which I did.

*Slingsby.* Was that Commission, which you read, dated 12 March?

[Captain Overton reads the copy of it, which he then wrote from the originals which agreed with this.]

*Slingsby.* I deny that the Commission then delivered was of that date.

*Waterh. and Overton* both deny the altering of the date.

*Slingsby.* Major Waterhouse desired me to alter the date of the Commission, and I I out April and the day, and put in

*Capt. Overton examined.*

*Att. Gen.* What treaty was between sir H. and you at Hull? Are you an officer there?

*Overton.* Yes.

*Att. Gen.* How long have you been an officer there?

*Overton.* About ten years.

*Att. Gen.* What proceedings was there between sir H. and you? What meetings had you, &c. Was he your prisoner?

*Overton.* He was my prisoner. The first time he spake any thing to me, was on Feb. 18, last, when he told me, he thought me the strictest man alive with prisoners, but now would believe the contrary: Said, that I searched a man of his for a letter; but afterwards, to prevent me, he gave his letter in a purse with some money to his Landress, who carried it into the town, and sent it away; and after that (he told me) I never found any letter. I told him, if he wanted any thing necessary, I would go to the governor about it: He told me, it was not much for that, but that I might very much befriend him. He wrote me, that a colonel (naming him) was engaged to bring six regiments from the king; asking whether I knew my men were right for me, and particularized one Clerk: I told him he was right. He asked me what I thought of 100*l.* to give them: I told him they did not use to have such great gratuities. This was 18 Feb. 1657.

28 Feb. He asked me where the Sally-port was; I told him it was twenty yards from the Castle. He told me, some prisoners not long ago intended to make an escape that way, but were prevented, and asked me which way it entered into the Castle, which way I could let in any men into the Castle, that I should not want money, whether I could tell how to victual the Castle, he would be glad if I could do it. He told me, that the king kept his designs so close, that none knew of them, and that it was not known whether he would land at Hull or Scarborough.

3 March. He asked me whether I continued my command: I told him I knew nothing to the contrary; to which he shewed much gladness. He told me, Duke Dassy was to bring a considerable party, but staid so long that the rest were gone.

6 March. He asked me what news, and said that Chapman had assured his son the town was too strong for the garrison; and asked me who I knew in the town to be right: I told him, Edw. Chapman was not for the Soldiery.

14 March. I told him, that his old Master C. Stuart was about to set sail with 7 or 8,000 men. He said, that the king was more private than to let any man know his design; but asked me, whether I was ready to receive him?

23 March. Sir H. Slingsby being below in our chamber, told me that I had a fit opportunity to receive such men as might be right for

me. I told him, I thought I could not have have half my number. He told me, he was glad I would serve the king; and said, that if he had any favour from the king, I should not want any thing. He told me he had assurance, that any that assisted the king when he first came to kiss his mother earth, he would give them 4 or 5,000*l*. That he would furnish me with money; and desired that I would not shoot any great bullets at king Charles's men when they were landing. And further told me, That if I would take a deputation to command under major Waterhouse, he would procure it.

On April 2. Sir H. S. told major Waterhouse, That he had a Commission for him to be governor of Hull, and I saw him deliver a parchment Commission to major Waterhouse.

*Att. Gen.* If sir H. hath any thing to object, he may.

*Slingsby.* I see that I am trepanned by these two fellows: They have said that seriously against me, which was spoken in mirth between us: I never sought to them, but they to me: the Commission was procured by no intercourse with any persons beyond the seas, but a blank which I had for four years together. Nor had I any correspondence beyond sea, to carry on any design here.

*Lieut. George Thompson* sworn.

Being asked what officer he was, he answered, I am a lieutenant to major Waterhouse. I was desired to go and see sir H. Slingsby, April 16, who told me, That he had great confidence in me. I said to him, why? He told me, he thought I had good thoughts of the king. His son told me, he heard the king was to come in, and to bring in a considerable army, but knew not when. Next day I went again to sir H. and asked him if he would walk on the leads, which he did; and there I told him, I had been pondering on the words he last spoke to me: Who then hugging me, said, I have a great deal of confidence in you, there is a design in agitation to bring in the king with a considerable army, but he did not know how soon it would be; but told me, I should have notice of it: and said that the king had promised pardon to to all officers but the Lord Protector and lord Bradshaw.

*Slingsby.* I confess such like discourses; but Waterhouse spoke to me, that I would speak to Thompson to try whether he would be assistant; but I told him I would not, lest he should not accept it, and then turn him out of his place. Waterhouse pressed me to go to Thompson, and major Waterhouse invited us to his house to dinner: after dinner he spoke to Thompson to go with me on the leads, to shew me the guns; we walked about, and came down again. Then said Waterhouse to me, Did not you speak to Thompson? I said not. You had a good opportunity, said he. At last Thompson came to me, and I had some discourse with him about it.

VOL. V.

*Ld. Pres.* Sir H. S. have you any thing else to say?

*Slingsby.* No, my lord.

[Then Mr. Serjeant Maynard summed up the Charge, Plea, and Evidence, and eloquently set forth the fulness and clearness of the Evidence, with the heinousness of the offence, and demanded the Judgment of the Court.]

*Att. Gen.* I shall not trouble you with repetition, the matter being clearly laid open: The place where this acting was, and where the design was laid, was, I may safely say, the most considerable place in England for Charles Stuart's design; a place\* strongly seated and situated, and remote from this city: and had he prevailed there, as he endeavoured, it had not been peace with us that now are here. And truly, my lord, I cannot but pity those gentlemen that are thus drawn into designs which I am confident will never take; and I am sorry that people should be so seduced as they are, for their seducers bring them to the gallows, and then laugh at them. And my lord, I pity this gentleman, (pointing to sir H.) that those grey hairs should thus go to the grave. I have no more to say, but crave the justice of this Court.

The Serjeant at Arms was commanded to take away the Prisoner.

Proclamation for adjournment of the Court into the Painted Chamber. After a little private debate in the Painted Chamber they adjourned till Thursday next, nine in the morning.

Thursday, May 27, being appointed for the meeting of the same Court, about ten of the clock they accordingly met in the Painted Chamber, Westminster; where after about two hours private debate, they adjourned untill Tuesday next, the 1st day of June.\*

Of this matter Ladlow writes thus: "Another plot much more dangerous" (he had just before mentioned a conspiracy of some Fifth Monarchy-men against Cromwell) "was about the same time carried on by the Royalists, and discovered to him by his spies."

"The persons concerned in it he used with more severity, because he accounted them to be of a more formidable party, and therefore referred them to be tried by those persons whom his last assembly had nominated to be a High Court of Justice. The prisoners were; Dr. Hewet, sir Henry Slingsby, and Mr. Mordaunt, with some others of the meaner sort. The general charge against them was for endeavouring to levy war against the government on the behalf of Charles Stuart. The particular charge against Dr. Hewet, was for dispersing commissions from the son of the late king, and persuading divers to raise forces by virtue of

\* See the particulars of the Judgment and Execution at the end of Mordaunt's Case, No. 204, *infra*.

the same. That against sir Henry Slingsby, was for attempting to debauch some of the garrison of Hull to the service of Charles Stuart, and delivering a commission from him to them. The prisoners of less note, were charged with a design of firing the city in several places at the time appointed for their party to be in arms. Dr. Hewet being brought before the Court, moved that he might be tried by a Jury, and demurred to the jurisdiction of the Court. But the Court over-ruled his demurrer, and told him that unless he would plead to his charge, they would cause his refusal to be entered, and proceed against him as if the fact were confessed. This being twice said to him, he was required the third time to plead. To which he answered, that if the judges would declare it to be according to law for him to plead he would obey, but he was told that the gentlemen then present were his judges, and that if he would not plead they would register his contempt the third time; and upon his refusal did so. Mr. Morlaunt admonished by his example pleaded Not Guilty, and after a full hearing of the witnesses on both sides the Court acquitted him by one voice. Then sir Henry Slingsby was called to the bar, and the witnesses on each side being heard, he was pronounced Guilty; though in the opinion of many men he had very hard measure. For it appeared that he was a prisoner at the time when he was charged to have practised against the government; that he was a declared enemy, and therefore by the laws of war free to make any such attempt. Besides, it was alleged that the persons whom he was accused to have endeavoured to corrupt,

had trepanned him by their promises to serve the king in delivering Hull, if he would give them a commission to act for him; which commission was an old one that had long lain by him; but all this being not thought sufficient to excuse him, he was adjudged to die. The rest of the prisoners were also condemned; and sentence of death being pronounced, sir Henry Slingsby and Dr. Hewet had the favour of being beheaded, and the others being men of a lesser figure were hanged, Cromwell's daughter and favourite, Mrs. Claypole, laboured earnestly with her father to save the life of Dr. Hewet, but without success: which denial so afflicted her that it was reported to have been one cause of her death, which happened soon after, with the concurrence of an ulcer in her womb."

Memoirs of sir H. Slingsby, written by himself, are in print. They are of very little value, of the matters recorded, the greater part relates to mere family transactions. They can scarcely be said to relate to any public matters of later date than 1646, though indeed the death of king Charles the first is mentioned at the end. He tells us that when the parliament was called at the end of the year 1610, (the Long Parliament) there was "great expectance of an happy parliament, where the subjects may have redress of all their grievances." Of his mode of living, he says, "The number we are at this time (Feb. 1639.) in household is thirty persons, whereof sixteen are men servants and eight women besides ourselves. Our charge every year is much at our certainty, being well accommodated with good, faithful and diligent servants in their several offices, so that at least every year I spend in housekeeping, 500l."

### 203. The Trial of Dr. JOHN HEWET, before the High Court of Justice, for High Treason: 10 CHARLES II. the 1st of June,\* A.D. 1658.

THE Serjeant at Arms being commanded by the Court to fetch the Prisoners to the Bar; Dr. Hewet was brought to the Bar accordingly. After Proclamation was made for Silence, the Lord President asked Mr. Attorney General what he had to say against the Prisoner at the Bar, Mr. Attorney General thereupon exhibited an Impeachment of High Treason against the Prisoner, and desired it might be read, and prayed that the Court would please to receive his Answer thereunto. The Charge was read by Mr. Phelps the Clerk; the effect of which was as followeth, viz.

\* "May 25th, 1658. The trial of Dr. Hewet before the New Commissioners of the High Court of Justice this day. The Doctor did not carry himself prudently." Whitelocke's Memorials. In 1 Thurloe's State Papers, 707, *et seq.* are some letters from Corker and Morland to Thurloe, and from Corker to Morland about this business.

"That John Hewet, late of the parish of Gregory's in the city of London, Doctor of Divinity, minding and intending to embroil this Commonwealth in new and intestine wars, the 30th of April now last past, and at divers times since the 10th of October, which was in the year of our Lord 1656, and before the said 30th of April last past, as a false traitor and enemy to Oliver then and yet Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions and territories thereunto belonging, and to the said Commonwealth; together with one Trelawney late of London, gent. Henry Bishop of Lewes in Sussex, gent. and other their complices, at the parish of Gregory's aforesaid, and at Lewes in Sussex, did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir up force, and levy war against the said Oliver Lord Protector, and against the government of this Commonwealth, as the same is now established, and to subvert and alter the same.

'And did also then and there, and at divers other times and places, as well before as after the said 30th day of April now last past, and after the said 10th of October 1656, traitorously, advisedly, and maliciously declare, publish, and promote Charles Stuart, eldest son to the late King Charles, to be King of England, Scotland, and Ireland, and the dominions thereunto belonging: and did then and there traitorously, advisedly, and maliciously hold intelligence and correspondence with the said Charles Stuart. All which said Treasons he the said John Hewet, at the parish of Gregory's in the said city of London, and also at Lewes and elsewhere, did traitorously, advisedly, and maliciously declare, at the times and places aforesaid, by conferring with John Stapely and Henry Mallory how to effect the same; and by encouraging the said John Stapely and Henry Mallory thereunto, and by delivering commissions to them from the said Charles Stuart, concerning the levying war against the said Oliver Lord Protector of the Commonwealth of England, Scotland, and Ireland, &c. — All which said Treasons are contrary to the Statute in that case made and provided. With which said Treasons committed and done, the said Attorney General, for and on the behalf of his highness the Lord Protector and the Commonwealth, doth charge and impeach the said John Hewet; and for and on the behalf of the said Oliver Lord Protector, and the Commonwealth, prayeth that the said John Hewet may be put to answer; that such trial, judgment, and proceedings may be had against him, as to justice doth appertain. And the said Attorney General doth aver that the said John Hewet is the person by name appointed by his highness the Lord Protector to be tried and proceeded against according to the Act'

[Dr. Hewet, the Prisoner, sitting covered whilst his Impeachment was reading, the Lord President commanded his hat to be taken off; which the Doctor observing took it off himself. Then Mr. Phelps, Clerk to the High Court, addressed the Prisoner to this effect:]

Mr. Phelps. John Hewet, D D thou standest here charged of High Treason, this Court requires you to give a positive answer, whether Guilty or Not Guilty.

Dr. Hewet. My Lord, if I have already misbehaved myself here, my error is the more pardonable, because I have not had any counsel; and I dare not presume to have any knowledge in any faculty, especially in the law. I never did change my cassock into a jump; I am better acquainted with a pulpit than a bar; better read in St. Austin than my lord Coke; and in the Fathers, than Rastal's Entries, or Plowden's Commentaries. In all my life I never studied any law case till now; that necessity that hath no law hath made me thus far to become a lawyer, as to think to plead (not for

my livelihood but) for my life. God forgive them that have occasioned this unusual and unaccustomed study, that hath put me into such a pulpit as I never saw before. And therefore, my lord, inasmuch as I have often heard that there are such niceties in the law, that a man may be lost in the severity of it for a word spoken in mere simplicity; I shall crave that there may be nothing taken, in prejudice to my innocence, from words spoken in simplicity; And I hope you will please to grant me that

Ld. President (Lisle). Dr. Hewet, I am sorry, truly very sorry, to see such a one as you in that place; but you are impeached of High Treason: All favour will be shewn you according to the rules of justice. I think you desire counsel?

Hewet. No, my lord, it is first, that I knowing nothing of the law, may have nothing (simply spoken) prejudice me; and that you will allow me counsel

Ld. President. The Court is counsel for you, your business is to plead to the Indictment; you are required by the Court to answer whether Guilty or Not Guilty.

Hewet. My lord, you sit there as Judge, I beseech you let me know by what Commission you sit there \*

Ld. President. Dr. Hewet, we sit here by a Commission under the Great Seal of England, in pursuance of an Act of Parliament; that is our Commission

Hewet. Pray give me the favour to have the Commission read, my lord

Ld. President. Dr. Hewet, we know our own authority, it is not usual to read Commissions to prisoners; the laws of England and acts of parliament are to be submitted to.

Hewet. I am not to own every person that will sit to judge me, therefore I desire to know by what Commission you sit, and who are the judges, and then I shall say no more.

Ld. Pres. Those that are to judge you, are very well known; you consented yourself to the judges, we are all chosen by act of parliament, the parliament hath consented to it; we are chosen judges, and are your judges by act of parliament.

Hewet. My lord, I must know the persons, whether they be all here; I see but very few.

Ld. Pres. Here be very many, and we have been all called this morning, as the course is, and we sit now as your judges.

Hewet. Under favour, my lord, as I remember, the Commission by the act is directed to 150, and there are the Lords Commissioners of the Great Seal, with the lords of his Highness's Treasury, and all the judges, and divers other persons, are named in the act of parliament: I do not see so many faces as are mentioned in that act.

Ld. Pres. Dr. Hewet, I must tell you the Quorum is any seventeen or more of them: If we are here seventeen or more, we are a

\* See the Note to Sir Henry Slingsby's Case, ante, p. 875.

Quorum by that Commission: We are here I believe forty or fifty.

*Hewet.* My lord, with submission, the case is true, in case the Commissioners were but seventeen, and they all present, then they might hear and determine; but if one were absent, they cannot, my lord, as I conceive.

*Ld. Pres.* You are a person of parts, and therefore we may delight to hear you; but we must keep ourselves to the business of the Court: You are required by the Court to answer the Impeachment.

*Hewet.* My lord, if you sit by the act, sit according to the act, and then I shall submit. It was resolved by all the judges of the King's Bench in the 13th of Eliz. in the earl of Leicester's Case.

*Att. Gen.* (Prideaux.) The Doctor did profess his ignorance of the laws, yet pretends more knowledge than the Court: The Court are here, and know themselves lawfully authorised to try you. Dr. Hewet, if you please to proceed to give your Answer, whether guilty or not, you will find the justice of the Court to be according to the laws of England.

*Hewet.* This learned gentleman, I know his face, though not his name; he speaks according to worth, but I cannot answer him according to law, and therefore still plead ignorance of the law, but desire to be tried according to law; and I have given you a law precedent, if you will go against it I shall say no more.

*Att. Gen.* This gentleman hath it by tradition, not by his own knowledge; but the case he mentions cannot parallel this. The act of parliament saith, an hundred and fifty, or any seventeen, here are three seventeens.

*Mr. Sol. Ellis.* I think the Commission is directed to your lordships, or any seventeen: ['Which Commissioners, or any Seventeen,' &c.] The meaning whereof is, That those seventeen, or more respectively, should hear, &c. There were several Quorums for England, Scotland and Ireland; Seventeen for England, Thirteen for Scotland, &c. That Case out of Plowden differs clearly from this: For if a Commission be directed, and there be no Quorum, then the Commissioners must all certify. We humbly conceive, that if your lordships be here seventeen, or more, you are fully authorised to proceed.

*Att. Gen.* In many Cases you have a Quorum of persons, such and such men: It is true, here is no Quorum of persons but a Quorum of the number; and if there be a Quorum of seventeen, it is warrantable.

*Hewet.* This learned gentleman, he is better able to speak what is law than I; but under favour, and with submission, I do not think he may judge of the laws, or the other (that spoke his private conception) to interpret the meaning of the parliament. And, my lord, if your lordships please, I shall make this my humble appeal to the learned judges of the law, That if they will say, in this respect, that this is a lawful judicature, I shall proceed.

*Ld. Pres.* You have heard the words of the

act of parliament read, authority is given to the Commissioners, or any seventeen or more of them; ['Which said Commissioners respectively'] that is, for England seventeen, or more of them: and you have heard the judgment of the Court upon that. That which you speak of in relation to my lord Leicester's Case is true; if a Commission be directed to Commissioners, and no Quorum appointed, then all must certify; but by the act of parliament, and the Commission made in pursuance of it, the Quorum is seventeen: but here are three Quorums.

*Hewet.* My lord, in as much as all the Commissioners are named in that act, and that Commission is according to the act, they are all commissioned to sit; and unless all sit, the rest cannot try and examine, &c. And I shall refer it to the Judges of the laws.

*Ld. Pres.* We did not call ourselves to be your judges; by being named your judges by act of parliament, we have power to declare to you what the law is by that act of parliament. I have declared it.

*Hewet.* My lord, if the Quorum had been named, then it were somewhat; but it being directed to seventeen, or more, when more or seventeen are commissioned, all must sit: I refer it again to the Judges of the Laws.

*Ld. Pres.* Dr. Hewet, what you say now, or what you say hereafter, besides this, you have time to speak to, as to matter of law, after matter of fact hath been tried; if you plead to matter of fact, what you say to the Court as to matter of law, we shall be ready to hear it; apply yourself to the Court in matter of fact. The Court asks you, whether Guilty or Not?

*Hewet.* My lord, I must first know whether the Court be a lawful judicature, before I give in my Defence.

*Ld. Pres.* Dr. Hewet, you have offered very much touching the jurisdiction of the Court, in conclusion you must acquiesce; I must put you up to plead; you know the danger, if you do not plead, being required: if you stand mute and do not plead, it is equally as dangerous to you, as if you had confessed the crimes.

*Hewet.* I am so highly sensible of the privileges of an Englishman, that both for the satisfaction of my own conscience, and all persons, I would not willingly give up the liberties and privileges of any English freeman to any body that demands it; I am very loth that there should be any just imputation laid upon me, that I should seek a disturbance in point of self-interest, to divide myself from the communion of those that are my fellow-freemen; and I should (as I have always) abhor to be both a schismatic from the church, and singular from the state. My lord, I am so concerned for the privileges of an English freeman, and public interest, that I should be loth to do any thing towards the giving them up, that might make my heart ache. I shall desire it may be determined by the Judges.

*Ld. Pres.* You speak of common friendship;

what is common friendship, but to be a friend to the public government? If you have been a friend to the government and peace of this nation, you need not fear to plead to the indictment: and therefore I require you to plead to it.

*Hewet.* Whenever you shall come to a particular examination of the business, it will not appear that I have been an enemy; I desire, that whereas there are many niceties in the law, I humbly crave the engagement of your honours, that there may not be any advantage taken.

*Att. Gen.* God forbid.

*Hewet.* My lord, I think I have not spoken any thing unreasonably, or against law, and therefore humbly crave my former request.

*Att. Gen.* If you please, the Doctor knows that there must be a judgment, in which we must acquiesce: this is that judicature that calls you before them; you sit by the highest authority of England; an act of parliament in the first place, a Commission under the Great Seal in the second place, and a Commission of his Highness, against whom, of which the Doctor is one; I desire he may give an answer to the impeachment; that being done, we shall have liberty on both sides to speak to what is justice, and law, and fact: if you are not guilty, be you assured that this Court will not take your blood upon them; you have a very fair court.

*Hewet.* This learned person speaks very fairly; it shall be far from me to question any act of a lawful parliament: but under favour as yet it doth not appear to me, that you have by that act by which you sit, power to hear and determine concerning the matters of which I am charged: I refer it, and appeal again and again to the learned judges of the laws, even his highness's judges.

*Ld. Pres.* Dr. Hewet, the Court has had much patience in hearing of you thus long, you having not so much as owned their authority; if you will not own us, we will own you: therefore I require the clerk to enter it, that we have required you to plead.

*Mr. Phelps,* Clerk. John Hewet, you here stand charged of high-treason against his Highness the Lord Protector and the Commonwealth; the Charge hath been read to you, the Court have demanded whether Guilty or Not Guilty; they again demand of you whether Guilty or Not Guilty.

*Hewet.* My lord, I shall be very loth to do any thing to save my life, and forfeit a good conscience; and I shall not, for my private interest, give up the privileges of those that are equal freemen with myself: I am looked upon in a double capacity, as a clergyman, and as a commonwealth's man; I should be very loth to be scandalous in either: and pray be pleased to do that justice to yourselves, as to vindicate the legality of your judicature, and then I will proceed.

*Att. Gen.* My lord, you was pleased to tell the Doctor, That you will own him when he

doth not own you; but, my lord, his flying in your face, and taxing you thus, is not to be endured: I wish he would have that consideration of himself, that if he doth not own your authority, you expect to be owned, otherwise he will be supposed to be guilty of all those crimes that are laid to his charge; and by not pleading, he doth confess them; that will be an high scandal, Mr. Doctor: therefore to vindicate yourself, I desire you to answer.

*Hewet.* This learned gentleman hath urged it with a great deal of civility and respect to me, which I must own, and thankfully acknowledge: but, my lord, withal, I dare not, for the saving of myself, give up others; so many thousands of others, by my precedent, that might likewise be involved in the same condition that I am in: therefore, my lord, let it appear that it is a lawful judicature, and I have done.

*Att. Gen.* I beseech Mr. Doctor to consider his case; he is not brought as a champion for the people of England; as he stands charged, he appears to you to be contrary affected: I humbly beg that he may be put to plead, that so his innocence may be cleared.

*Hewet.* My lord, I said before that I am no lawyer, I understand nothing of it, neither desire to be judge in my own cause; but I do not desire likewise to be judged by every person that would sit to judge me; neither would I give up that right that belongs to an Englishman, to every one that demands it: therefore I desire you to grant this petition, That you will make appear that you are a lawful judicature. I would rather die ten thousand times than I will be guilty of giving up my fellow-freemen's liberties and privileges.

*Att. Gen.* My lord, some of his own coat have acknowledged the like authority before him; but if Mr. Doctor be peremptory in this, that he will not own your authority, and plead to his Charge, I must do my duty; that is, humbly to pray the Court, that if he refuse to answer, I must pray their judgment, and acquaint him with the words of the act; [which accordingly were read.] So that, my lord, in default of answer, if Mr. Doctor will not plead to this, my lord, I must thereupon pray that you will proceed according to the act, as in cases of high-treason, which is very penal. I have no more to say.

*Hewet.* My lord, I suppose these learned gentlemen, who are so learned in the laws, will be cautious what they do against law; and I hope they will remember what condemnation and execution befel Tresilian\* in the 11th of Richard the 2nd, that did there misadvise the king to do such and such things; that is much like to this case of mine: and withal, I hope they will remember what befel the Judges in the Case of Ship-Money,† in the time of the late king; and therefore I hope they will be cautious themselves in doing any thing that is contrary to law.

\* See No.12.vol.1.p.89. † No.147.vol.3.p.285.

*Ld. Pres.* Dr. Hewet, you have heard the clause of the act of parliament read to you; whereby you may understand, that either we must proceed upon your Answer, or else to judgment upon your refusal; if upon your Answer you clear your innocence, then those freemen you speak of, may faithfully embrace you: but if you will not answer, we must proceed to judgment. I am sorry for your robe-sake, but if you will not answer, you cannot acquit yourself: you thereby confess it: therefore let me advise you, for your robe-sake, to follow the best counsel; that is, to put yourself upon that which prisoners must do. Answer to it, Guilty, or Not Guilty.

*Hewet.* My lord, I hope it is not the sense of the whole Court, that they should proceed against me, either to sentence, or any other way, till first they clear themselves to me.

*Att. Gen.* Pray, who is the judge? You must clear yourself to him.

*Lord Pres.* If there be any here that are of another opinion, let him declare himself. Dr. Hewet, you lose yourself mightily in saying this one thing so often, and we lose our time: I require you again to plead.

*Hewet.* My lord, I cannot speak of that too often, that is so dear and precious to me and every person.

*Att. Gen.* I can say no more, but pray your justice.

*Ld. Pres.* Dr. Hewet, I am called upon by the Court, because of your refusal to answer; but I pity you very much, and therefore desire once more the patience and favour of the Court, that they would give you leave to answer: therefore, Mr. Doctor, that we may not record your standing mute, and refusing to answer, I shall once more, in favour to you, require you to answer. Clerk, stay your hand a while.

*Hewet.* My lord, both the Court and all these persons will thus clear me to the whole world, that I have referred myself, and appealed to his Highness's judges of the law, to resolve whether this be a lawful judicature: this appeal is denied, therefore I must proceed to some other thing, seeing you all deny me that.

*Phelps, clerk.* John Hewet, D. D. you stand here charged on behalf of his highness the Lord Protector, of treason against him and his Commonwealth; you have heard the Charge, the Court hath several times demanded your answer, and you refuse; they the third time require your answer, whether Guilty, or Not Guilty.

*Hewet.* Pray, my lord, is there any Indictment found against me by a grand jury, by which I am to be tried? For by the fifth and sixth of Edward the 6th all Treasons are to be enquired into, and presented by twelve men: the Commission by which you sit, doth not declare any other way; I beseech you, is there any other Indictment?

*Ld. Pres.* You have a very great grand jury, forty persons, and we have power upon a special act of parliament, to give order for a Charge to be brought in against you; and we have,

according to that power and authority, given order for this Charge to be brought in against you, and you are to answer to it.

*Hewet.* My lord, with submission, you are not a competent jury.

*Att. Gen.* My lord, now it is the second part to the same tune; I know there are many others upon the same string when this is resolved. Sir, this is the grand jury, the petty jury, and your judge; they require you to give your answer, whether Guilty, or Not Guilty.

*Hewet.* My lord, this is likewise denied me, I now humbly crave a copy of my Charge, time to answer to it, and counsel assigned me.

*Ld. Pres.* For the copy of your Charge, it was never granted to any prisoner indicted for high-treason. For counsel, you are now upon matter of fact, whether Guilty or Not Guilty.

*Att. Gen.* I have a word to inform him, I would not press any thing against him, which in my judgment I thought not legal; you have given him your resolution as to the jurisdiction, there is nothing now to say, but Guilty or Not Guilty: he must bring himself to be a party, or else nothing can be asked.

*Hewet.* I think the prisoner cannot be charged and tried on one and the same day, no more than a man can be indicted and tried the same day, as in Kelway's Reports; and this was declared to be law in the case of the Portuguese Ambassador's brother.\*

*Att. Gen.* You are not upon your trial, you must plead and join issue, and then we will consider whether we will try you now or no; yet there is many a man hath been brought to prison the same day, found the same day, and tried the same day.

*Hewet.* I desire a copy of my Charge; if not that, I desire time to speak, and counsel assigned me, which hath been the course of former times; for counsel it hath been usually allowed, as in the case of Humphry Stafford in the time of Henry the 7th, and in the case of Lilburne. Baron Nicholas and sergeant Maynard were of counsel for major Rolph, who endeavoured to poison the late king. And for matter of law, it ought to be allowed, as in my lord Coke's sixth book of his Reports, 14 fol. is of the same opinion. Arundel had counsel assigned him for murder, in matter of law.

*Sol. Ellis.* For matter of fact, it was never allowed; but if he plead, and any matter of law do arise that's doubtful to the Court, then the Court, if they doubt of it, assign counsel; but the prisoner must plead first to the matter of fact. For a man to be accused the same day, and tried the same day, is no new thing. For counsel, if any thing arise in matter of law, then it may be considered. The Portuguese ambassador's brother came, and was accused and tried the same day. We shall humbly pray that he may plead Guilty or Not Guilty; if any matter of law arise, your lordships may do him justice.

\* See the Case of Don Pantaleon Sa, at p. 462 of this volume.



*Hewet.* My lord, with submission, this learned gentleman hath understood me but in part; my request was for counsel for matter of law in general, as well as particular for matter of fact. I humbly conceive that there are several acts of parliament that do free me from this charge, and particularly the Great Charter of England; for which I humbly crave I may have counsel assigned me.

*Ld. Pres.* You are now in generals; you speak of several acts of parliament, and you would have counsel to plead; counsel was never allowed in this case upon such a general desire; many that stand about you may have a prejudice to you, and think you are loth to plead: I have called upon you often; if we should once record the refusal, it would be very penal. I would advise you to plead to the Indictment.

*Hewet.* My lord, since you have denied me counsel, I shall desire to speak something in my own behalf.

*Att. Gen.* This is a very ill precedent to the justice of England: I suppose that you will allow him all favour, but the justice of England must be preferred against all persons whatsoever. The jurisdiction is settled to the satisfaction of the Doctor himself; if he will bring himself a party, and ask any thing of you, that must be by pleading; till then he can ask nothing.

*Hewet.* My lord, the judicature is not yet cleared to me, for the legality of it; and if you please to give a little patience, I shall give you the reasons why.

*Att. Gen.* I shall desire it may be no more thus.

*Ld. Pres.* I shall say no more to you, we must make our authority appear to you either by trying of you, or judging of you: will you be tried?

*Hewet.* My lord, the Charge depends upon an act of parliament, which was made about two years since, (17 Sept. 1656), the members of which parliament were chosen by the people, yet notwithstanding one hundred and fifty of them were not permitted to sit.

*Att. Gen.* My lord, we must not suffer this; pray, if he will not be otherwise satisfied, I must require your strict justice. Your words they are seditious; this shews the spirit of the man.

*Hewet.* I hope you will have patience to hear me for vindication of myself, and satisfaction of my own conscience and all persons whatever; and withal for the clearing of yourselves, that you do not bring blood upon yourselves by taking that power that is not justifiable—

*Att. Gen.* Truly, my lord, this is insufferable: Mr. Doctor hath had as much respect as ever any had. I have attended many, I never saw the like in my time; you have had the patience to hear him oppose yourselves, your authority, your persons, and to strike at the root of all. Mr. Doctor, I would have you to carry yourself with more respect. This shews, that much of what is charged against

you, is true; if you will scorn the Court, say it positively.

*Hewet.* My lord, I humbly submit myself to the laws of the land; I shall not dispute acts of parliament, but I conceive (if you please to give me a little patience) an House of Commons is not authority enough—

*Ld. Pres.* Mr. Doctor, pray remember that text, 'He that seemeth to be religious, and 'bridleth not his tongue, his religion is vain.' Will you plead or not?

*Hewet.* My lord, whilst I speak for the laws of the land, this is not an evil speech.

*Att. Gen.* My lord, if you please, I did receive your commands to prepare this Charge against this Doctor; in obedience to you I have done it, not willingly against your person, Mr. Doctor; I have some others to proceed against, if you will please that Mr. Doctor may dispatch one way or other. I must pray your final sentence, if he do not plead immediately.

*Hewet.* My lord, what I petitioned for before, I do again, That seeing you will not please to give me leave to speak either as to the privileges of Englishmen, nor as to the act, I desire time to speak to the Charge, and counsel.

*Ld. Pres.* You have heard that I must require your answer; you must plead Guilty, or not Guilty.

*Hewet.* Hath your lordship assigned me counsel in matter of fact, when matters of law arise?

*Ld. Pres.* We shall then take the consideration of it, now is not a time.

*Hewet.* My lord, I am in a great straight, I pray God assist me; and I here appeal to Almighty God, and to all the world, that I do against my soul and conscience nothing that shall be to the prejudice of the privileges of the laws of England; if there shall be any thing in these proceedings that shall be to the disadvantage of others, my soul be clear of it, the guilt be upon others; seeing I am necessitated upon this, and cannot have counsel assigned me for the judicature, for the legality of it, I referring myself to the judges of the land: I durst refer myself to his Highness's own counsel, that if they will say that this particular that I have urged, that this is a lawful judicature, I will go on.

*Ld. Pres.* I am required by the Court, before I enter your refusal, to require your Answer.

*Hewet.* I am in a great dispute, and I pray God direct me what to do in this case; though I do not at all dispute my own innocence, which I hope I shall clear; yet I could petition again (though I am tedious to you, that I can never importune enough) to take into your thoughts yourselves and posterity, and all the people of England.

*Ld. Pres.* I shall desire, because you may see what I say comes from the act of parliament, I shall desire the words may be read to him, what is to be done, if he refuse to answer.—Clerk, read the Clause.

[' And for examination of Witnesses upon

'oath (which the said respective Commissioners are hereby authorised to administer) and thereupon, or upon confession of the party, or in default of such answer, to proceed to conviction and final Sentence, as in cases of High-Treason, and Misprision of Treason, according to justice and the merits of the cause; and such final Sentence to execute, or cause to be executed, speedily and impartially.']

*Hewet.* My lord, this is a printed paper which is called an Act of Parliament—

*Ld. Pres.* I must take you off, you have been required to answer, often required; and having refused, in the name of the Court I require the Clerk to record it; and pray take away your prisoner.

*Hewet.* My lord—

*Court.* Take him away, take him away.

*Dr. Hewet* had prepared a Plea and Demurrer to the jurisdiction and proceedings of the Court, and Exceptions to their Judgment, drawn up in form by counsel, which was ready engrossed, and which he designed to have tendered the Court, had he not plainly perceived their pre-emptory resolution to overrule him:

The PLEA and DEMURRER of John Hewet, Doctor of Divinity, to the Jurisdiction and Proceedings of the Commissioners in pursuance of an Act for the Security of the Lord Protector's Person, &c. and to the Sentence of Death pronounced against him by them.

This Defendant saith, That he is by birth a Freeman of England, and that it is the undoubted antient inseparable Birth-right, Privilege, and Inheritance of every English Freeman, both by the Common Laws, Franchises, Great Charters, Statutes, and Usages of this land, ratified from age to age by the Votes, Resolutions, Declarations, Judgments of the High Court of Parliament, and other public Courts of Justice, the Oaths of the Kings of England and their Justices, and by many other solemn public Confirmations, Protestations, Oaths, Vows and Covenants: (a) 'That no Freeman of England may or ought to be taken or imprisoned, or disseized, or disinherited of his freehold, liberties, or free customs; or be outlawed, exiled, or any way destroyed, passed upon, dealt with or forejudged of life or limb, or put to death, upon any accusation whatsoever, but by the lawful Judgment of his Peers, or by the Law of the Land; and that he shall not be put to answer without presentment before the justices, or thing of record, or by due process of the law, or by Writ Original, according to the old Law of the Land; (b) And that all

'Trials hereafter to be had, awarded, or made for any treason, shall be had and used only according to the due order and course of the common law of this realm, and not otherwise, upon Inquest and presentment by the oaths of twelve good and lawful men, upon good and probable evidence and witness: And that (c) if any thing be done to the contrary of the premises, it shall be void in law, redressed, and holden for error, and nought: And if any statute be made to the contrary, that shall be holden for none.' And moreover this Defendant saith, that in the Parliament 2 R. 2, Rot. Parl. n. 47, the Commons petitioned the King, and Lords, 'That the Constable and Marshal of England' (then encroaching upon this privilege of the Commons, by holding pleas of Treason and Felony before them after the course of Martial Law) might from thenceforth surcease to hold places of Treason and Felony before them, done within the realm, and that the same may be determined only before the King's Justices, according to the Great Charter; which was then assented to: and that upon the like Petitions of the Commons in the Parliaments of 1 H. 4, and 2 H. 4, Rot. Parl. n. 89, it was assented to, and enacted by the King and Lords, 'That the King's liege people (d) should not be put to answer before the Constable or Marshal in courts of Chivalry, for any thing done within the realm, but that (as before in the times of his progenitors) the same might be tried and determined only before his Justices in his Courts, as it ought to be according to the common law of law of the realm, and in no other place or manner.' Upon which considerations many of the King's loyal lords, gentlemen and other subjects in the general insurrection of the villains, and other rebels against the King, in the fifth year of Richard the second, having inflicted divers punishments upon the said villains and traitors without due process of the law, and otherwise than the laws and usages of the realm required; though they did it out of no malice pre-empted, but out of mere loyalty to the King, and to appease and cease the present mischief, and out of ignorance of the said laws and usage, in which if they had been learned, yet at that time they ought not to have tarried the process of the law in those punishments of their good discretion; yet those punishments and executions of them in a summary way being contrary to, and not warranted by the

c. 20. 35 H. 8, c. 1. 1 Ed. 6, c. 12. 1 and 2 Phil. and Mar. c. 10, 11. 5 E. 6, c. 11. 1 Eliz. c. 6. 5 Eliz. c. 11. 13 E. c. 1. 14 Eliz. c. 1. 18 Eliz. c. 1. 27 Eliz. c. 2. 1 Hen. 4, c. 14.

(c) 5 E. 1, c. 21, 2 Coke's Instit. p. 526, 527. 28 E. 3, Rot. Parl. n. 7, 8, 9, 10, 11, 12, 13. 29 E. 3, Rot. Parl. n. 29, 30. 3. 3, coram rege, rot. 92. Coke's 3 Instit. p. 52. 42 E. 3, c. 1, 3.

(d) Coke's 4 Instit. p. 124, 125.

(a) Coke's 2 Instit. p. 45 to 57. Magna Charta of king John, H. 3, and E. 1, c. 29, 25 E. 4, c. 1. 28 E. 1, c. 1. 5 E. 3, c. 9. 25 E. 3, n. 26 and c. 4. 28 E. 3, c. 3. 42 E. 3, c. 23. 2 H. 4, rot. Parl. n. 60. The Petition of Right, 3 Caroli.

(b) 25 E. 3, c. 2. 26 H. 8, c. 13. 33 H. 8,

laws and usages of the realm, they were enforced for their future indemnity against the King and his heirs, and the heirs, wives and friends, of those they punished, to petition the King and Parliament, for a general Pardon by Act of Parliament, to secure and indemnify themselves; which was granted them, in 5 R. 2, Parl. 1, ch. 5, else they might have been impeached and punished for the same, as well as king Richard the second himself; who in the Parliament of 1 H. 4, Rot. Parl. n. 44, (wherein he was enforced to resign his crown, and then deposed for his misgovernment) was amongst other Articles impeached of this in particular by that parliament, 'for that against the Great Charter (ch. 29.) and his Coronation Oath, he suffered many of his liege people to be maliciously accused, apprehended, imprisoned, and tried before the Constable and Marshal of England in their military Court, for words secretly spoken, or acts privately done, to the scandal of his royal person, where they were enforced to acquit themselves by duel; whence the destruction not only of the nobles and great men, but likewise of all and every the persons of the Commons of the realm might probably have ensued.' And this Defendant further saith, that one Peter Burchet of the Temple, in the thirteenth year of queen Elizabeth's reign, having wilfully stabbed that famous sea-captain John Hawkins, for not being of his opinion in religion, (Burchet being persuaded in conscience that it was lawful for him to kill every one who was not of his opinion) the queen being much incensed against him for this horrid fact, commanded him to be forthwith tried and executed for it by Martial Law: But her Judges and Council informing her, 'That he could not be so tried by Law, it being done not in an Army, but in time of peace, when her Courts of Law and Justice were open;' thereupon she desisted from this way of trial; After which he was tried according to law for this, and his murdering his keeper in the Tower, as Mr. Camden records in his Annals of queen Elizabeth, p. 242, 243. And whereas in the parliament of the fourth of king James holden at Westminster, there was some kind of motion made; 'That to extirpate and reform the inveterate evil customs, disorders, feuds, blood-sheds, thefts and spoils, wherewith the worst sort of inhabitants near the Borders and Limits of both realms of England and Scotland, were infected and inured, that they might be tried by a Summary Proceedings, by way of Martial Law, or by the laws of the kingdom into which they fled to purchase their impunity:' This parliament was so far from approving thereof, that they specially enacted, in this case (even of these worst sort of men) 'That in regard of some difference and inequality in the laws, trials, and proceedings in cases of life, between the justice of the realm of England and that of the realm of

Scotland, if appearing to be be most convenient for the contentment and satisfaction of all his majesty's subjects, to proceed with all possible severity against such offenders in their own country, according to the laws of the of the same whereunto they are born and inheritable; and by and before the natural born subjects of the same realm; by whom their murders, felonies, rapes, &c. should be inquired of, heard and determined before his majesty's Justices of Assize, or Commissioners of Oyer and Terminer, or Gaol Delivery, by good and lawful men of the three counties therein specified, and none other. And that at all such trials the jury then and there sworn, shall have in their power and election, according to their conscience and discretion upon their oaths, to receive and admit only such sufficient good and lawful witnesses upon their oaths, either for or against the party arraigned, as shall not appear to them, or the greater part of them, to be unfit and unworthy to be witnesses in that cause, either in regard of their hatred and malice, or their favour and affection either to the party prosecuting, or to the party arraigned, or of their former evil life and conversation.' Which common equal, indifferent justice allowed to be worst malefactors, as their Birth-right and Inheritance by this Parliament and Act, this Defendant now only craves, and hopes you cannot in law or justice deny him; nor proceed against him by way of Martial Law. And so much the rather, because since this statute, king Charles in the third year of his reign, by the advice of his Council (to suppress the insolencies of Soldiers and Mariners then billeted in sundry parts of the realm) having issued out Commissions to sundry persons of quality, in time of peace, 'To execute Martial Law upon those Soldiers and Mariners, and other dissolute persons (only) joining with them, for murder, robbery, felony, mutiny, and other outrages committed by them, by such summary course and order as is agreeable to Martial Law, and as is usual in armies in time of war; to proceed to the trial and condemnation of such offenders, and then to cause them to be executed and put to death, according to the Law Martial; By pretext whereof, some of the said soldiers and subjects were put to death by some of the said Commissioners, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged, (before the king's justices) and executed.' Upon complaint of these Commissions, as illegal, in the Parliament of 3 Caroli, they were, after a full debate by both Houses, voted to be against law. And in the Petition of Right itself, it was then prayed by the Lords and Commons, assented to by the late beheaded King himself, and enacted by this law, 'That hereafter no Commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them any of his

'Majesty's subjects be destroyed or put to death, contrary to the laws and franchise of the land;' which the Lords and Commons then prayed, and the King granted, confirmed by Act of Parliament, 'as their right and liberty according to the laws;' which Act stands yet in its full force. Upon consideration of which late excellent law, the last long Parliament, in the cases of the lord Connor Maguire and Mac-mohun, and the Court of King's Bench wherein they were tried by their special order, in Michaelmas and Hilary Terms 20 Caroli, were so just, punctual and honourable, in confining themselves to the rules of law and justice; that though these were principal conspirators, and actors in the late most horrid, barbarous, bloody Treason, Rebellion, and Massacre in Ireland, and taken in its prosecution; yet they were so far from trying them by Martial Law in a Council of War, or High Court of Justice, even in a time of open war both in England and Ireland, that they assigned the said Maguire counsel, to argue against the very jurisdiction of the King's Bench itself; Whether he, being a Peer of Ireland, could in point of law or justice by the statute of 35 H. 8, ch. 2, or any other Act, be outed of his Trial by his Peers, and tried by a Jury of good and lawful men of the county of Middlesex for a Treason committed in Ireland, being sent a prisoner from thence against his will? Which was there (e) publicly argued at the bar by counsel *pro et contra*; and then by the Judges, and over-ruled at last against him, before he was put to plead Guilty or Not Guilty to his Indictment: after which they both were admitted to take both their peremptory and legal Challenges to the Juries returned; (f) (according to law, admitting such Challenges even in cases of High Treason;) and all just exceptions to the witness produced; and had a most fair and free Trial; being found Guilty by the Jury, before any Judgment passed against them. Which justice he humbly craves in his case, of less heinousness and importance than theirs, being a native English Freeman, and they only Irish rebels; because this his inherent Birthright and Liberty, can (g) neither be forfeited by him for any real or pretended Treason or Offence whatsoever, nor yet be denied or deferred to him (after all the premised laws, statutes, charters, judgments, resolutions, precedents) without the highest injustice. And he further saith, that to proceed against, try, condemn, execute him in this High Court, without a legal Indictment, Presentment, and Trial by the Oaths of twelve good and lawful men, according to the due order and course of the common laws of this realm (and that in Westminster-hall itself,

(e) See Mr. Prynne's Argument thereof, ante, vol. 4, p. 689.

(f) 32 H. 6, f. 26. 14 H. 7, f. 19. Brook Challeng. 86, 211, 217, Stamford's Pleas 1.3, c. 7. Coke's 3 Instit. p. 27.

(g) 1 E. 6, c. 12. 1 and 2 Phil. and Mar. c. 10, 11. Coke's 3 Instit. c. 1, 2.

the place of law and public justice, in time of peace, when and where all other Courts of Justice are open) or in any other form by way of Martial Law, or otherwise than a just Jury of his equals, is not only illegal, erroneous, and against all rules of justice (the Commissioners themselves being both his grand and petty Jury, and his Judges likewise; if not parties interested, to whom he can take no peremptory nor legal Challenges, which the (h) law allows him if tried by a Jury in cases of High Treason at this day;) but also wilful and malicious Murder by the laws of England, being against Magna Charta, c. 29, and done by such power and strength as he this Defendant cannot defend himself against, as is resolved in sir Edward Coke's 3 Instit. p. 52, and 224, (printed by special Order of the House of Commons, dated 12 May, 1641,) and long before in Andrew Horn his Mirrour of Justices, c. 5, p. 296, 297, who records, that our noble king Alfred caused no less than 44 of his Justices to be hanged in one year as Murderers, for condemning and executing some of his people without a legal Indictment and Trial by a sworn Jury; and others of them for offences not capital by the known Laws of the Land, and without clear and pregnant Evidence. And this Defendant likewise saith, that the Commons themselves sitting at Westminster, after the late king's execution, in their printed Declaration of 17 Martin, 1619, (expressing the grounds of their proceedings against the said King, and for settling the present Government in way of a Free State, to which many in present power and sitting here were assenting and gave their Votes) did thereby faithfully promise and engage to the whole English nation, 'That the good old laws and customs of England, the Badges of our Freedom, (the benefit whereof our ancestors enjoyed long before the Conquest, and spent much of their blood to have confirmed by the great charters of their Liberties) which have continued in all former changes, and being duly executed, are the most just, free, and equal of any other laws in the world; shall be duly continued and maintained; the liberty, property, and peace of the subject being so fully preserved by them;' adding, that, 'If these laws should be taken away, all industry must cease, all misery, blood and confusion would follow; and greater calamities, if possible, than fell upon us by the late king's misgovernment, would certainly involve all persons, under which they must inevitably perish.' And moreover, the General Council of the Officers and Army themselves (whereunto most officers and soldiers in present power and some Commissioners here sitting were parties) in the Declaration of their engagements, remonstrances, representations, proposals, desires, and resolutions for settling the Parliament in their just privileges, and the subjects in their liberties and freedoms (printed by their own

(h) Coke's 3 Instit. f. 27. Brook, Challenge 217.

Orders, and reprinted all together by Order of the Lords in Parliament, 27 September, 1647) pag. 11, 36, 37, 38, 39, (especially in their Declaration and Representation tendered to the Parliament concerning the just and fundamental Rights and Liberties of the Kingdom, 14 May, 1647) do profess and declare, 'That they were 'not a mere mercenary Army, hired to serve 'any arbitrary power of state, but called forth 'and conjured by several Declarations of Parliament, to the defence of their own and the 'peoples' just rights and liberties, and that they 'took up arms in judgment and conscience to 'those ends, and have so continued them, and 'are resolved, according to the Parliament's 'just desires in their declarations, and such 'principles as they have received from their 'frequent informations, and their own common 'sense concerning those fundamental rights and 'liberties, to assert and vindicate the same 'against all arbitrary power, violence and oppression, and against all particular parties and 'interests whatsoever; that so all the free-born 'people of this nation may sit down in quiet 'under the glorious administration of justice 'and righteousness, and in full possession of 'those fundamental rights and liberties; without which we can have little hopes (as to human considerations) to enjoy any comfort of 'life, or so much as life itself, but at the pleasure of some men ruling according to will and 'power. That they desire the establishment of 'such good laws, as may duly and readily render 'to every man their just rights and liberties.' And more particularly, in their Proposals to the Commissioners of Parliament, in order to the clearing and securing of the rights and liberties of the kingdom, Aug. 1, 1647, s. 10, p. 114, they proposed, 'That the rights and liberties of the 'Commons of England, may be cleared and vindicated from any other judgment, sentence, or 'proceeding against them, other than by their 'equals, or according to the law of the land.' And this Defendant finally saith, that by the Instrument of Government itself, 16 December 1653, Artic. 6, and the Oath therein prescribed to, and accordingly taken by his highness, Oliver Cromwell Lord Protector, he is limited and sworn, 'not to alter, suspend, abrogate or repeal the laws, and to govern these nations according to the laws, statutes and customs; 'causing justice and law to be equally administered: whereunto he is likewise obliged and 'sworn again, by his Oath prescribed in the 'late printed Humble Petition and Advice.' Neither doth that pretended Act, by which you here sit as Commissioners to try this Defendant (made by no legitimate, nor free Parliament of England, and that when near one hundred and fifty members thereof were causelessly and forcibly secluded) authorize you (as he humbly conceiveth) to proceed against him for any crime therein specified, to conviction or final sentence, but only as in cases of High Treason, and Misprision of Treason, and according to justice; and that you cannot do but only by proceeding against him by a lawful Indict-

ment and Trial by a Grand and Petty Jury, according to the Great Charter, Laws, and Statutes of the Land, and the late Petition of Right, which this new Act cannot repeal or null. All which this Defendant is ready to aver, justify, and make good, when and where this High Commission Court, or his highness the Lord Protector shall appoint: which being a mere matter of law, wherein both the liberties and lives of all the free-born people of England are so universally, highly, and equally concerned, as well as the liberty and life of this Defendant, proper only to be debated before, and resolved by the Judges of the Law or the High Court of Parliament; This Defendant thereupon humbly prayeth, That it may be referred to, openly argued by his learned Counsel, before all the Judges, or a Parliament, and by them determined; and in the mean time humbly demandeth the judgment of this High Commission; Whether they may, can, or ought in point of law and justice, to proceed against, condemn, or execute this Defendant, upon any illegal Accusation or Impeachment whatsoever, here exhibited or read against him, without a legal Indictment, Presentment and Trial by a Jury of his Equals: Or can take any further cognisance of the Charge against him, for the premised authorities and reasons; which he in all humility referreth to, and imploreth you to take into your saddest considerations, and that in the name and dreadful presence of the Omniscent, Omnipotent, Sovereign 'Judge of all the earth,' (Gen. xviii, 25.) 'before whose glorious tribunal you must all 'ere long appear' (stript of all earthly honours, pomp, guards, and power,) 'to give a strict account of all your actions, whether good or 'evil,' (2 Cor. v. 10.) and of your proceedings in this very cause; when this his Plea and Demurrer will rise up in judgment against, and condemn you in case you wilfully prejudge, misjudge, or reject it now, without due and full examination according to law, justice, conscience: And if the consideration of this terrible Day of Account and just Retribution before Christ's own Tribunal, shall not prevail with you to admit of this his Legal Plea and Demurrer, (as being after your deaths perhaps many years yet to come, and no ways endangering the loss of your lives, lands, honours or estates in this present world,) he shall then humbly intreat you for your own future indemnity (he hopes, without offence) seriously to consider, That in the Parliament of 11 R. 2, c. 1, 5, 21 R. 2, c. 11, 12. Tresilian Chief Justice of the King's Bench, Belknappe, Chief Justice of the Common-Pleas, John Care, John Holt, Roger Fulthorpe, William de Burgh, Judges, and John Locton the King's Serjeant, were all impeached of High-Treason, condemned, and some of them executed as traitors and enemies to the king and realm, the rest perpetually banished, their lands and estates confiscated to the king, and all access of their wives, children or others to them during their exile, prohibited by Judgment and Act of Parliament, only for

delivering their opinions, through menaces and fear of death at Nottingham Castle, under their hands and seals, against the Law of the Land; that the Lords and Commons who procured the Commission in the Parliament of 10 R. 3, for the better government of the realm, and moved the King to consent thereto, deserved to be punished as traitors, by capital pain of death\*. That so by colour of these their opinions, Robert de Veer duke of Ireland, Nicholas Brambre, knight, and others of the King's ill counsellors, might take occasion to destroy and take away the lives of the lords who procured and executed that Commission, and others of the king's people, by undue and illegal Indictments and Proceedings, without any lawful Trial by their Peers as traitors to the king. And the said Sir (i) Nicholas Brambre for enforcing the Judges, with others of the King's ill counsellors to deliver their opinions against law, and for his beheading and executing 22 prisoners of Newgate impeached and indicted of felony, (or suspicion of felony) at Foul-Hoke in Kent by regal and tyrannical power incroached by him, without warrant, or due process of the law, against the Great Charter and usage of the realm of England, was in the same parliament condemned for High-Treason, and beheaded at Tower-hill on the same block, with the same as he had prepared to cut of the heads of others he intended there to execute as his enemies. And that in the last parliament of king Charles, the two Chief Justices, Brampton and Finch, the Chief Baron Davenport, and all the rest of the Judges and Barons, except two, were by the whole house of commons, and some of the commissioners here sitting, and counsel pleading against this Defendant, impeached of High-Treason, dis-judged and put to fines and ransoms, for that they had traitorously endeavoured to subvert the fundamental Laws and Government of the realm of England, and instead thereof to introduce an Arbitrary and Tyrannical Government against law; which they had declared by traitorous words, opinions and judgments in the case of Ship-Money, against Mr. John Hampden; Which Judgment and Opinions concerned only the property of the subjects goods, not the hazard of their lives, inheritances and forfeiture of their estates, as your present proceedings do, being of a more high and dangerous consequence; In which parliament, by the like Impeachment and Prosecution, William Laud, Archbishop of Canterbury, and Thomas Earl of Strafford Lord Deputy of Ireland, were condemned and executed by Judgment of Parliament, and some here present, as 'Traitors, guilty of High-Treason, for that they endeavoured traitorously to subvert the Fundamental Laws and established Government of this Realm, and instead thereof to bring in and set up an Arbitrary and Ty-

rannical Power, against Law. To prove which Charge, their arbitrary proceedings contrary to the Laws and Great Charters of England, both at the Council Table, in the High-Commission, Star-Chamber, and elsewhere, were given in evidence against them; and more particularly, the Earl of Strafford's proceeding against the Lord Mount Norris in Ireland, by a Council of War, in time of peace, and condemning him to Death therein without any legal Indictment and Trial by his Peers against the Great Charter and Laws of the Land, though he did not execute him thereupon? And whether your present Proceedings of like nature against this Defendant, in case you reject or over-rule this his Plea and Demurrer, and condemn and execute him by pretext of an illegal Act (made by no free and lawful Parliament of England,) for offences not reasonable by the known laws and statutes of the land, nor legally proved against him by any one witness produced in Court before his face, without consulting the present Judges of the Land (who refuse to join or sit with you in this new illegal way of trial) will not much more involve you in the crime and guilt of the very self-same High Treasons, for which they were thus anciently and lately impeached, condemned, executed by Judgment of Parliament, and so expose you to, the like capital crimes, forfeitures, confiscations of your real and personal estates, as they underwent, in future Parliaments, by your endeavouring to subvert all the premised Fundamental Laws and established legal proceedings in the land, and to introduce and set up a more Arbitrary and Tyrannical Power, contrary to law, to the endangering not only of the properties, but lives, liberties, and inheritances of all the noblemen, gentlemen, clergymen, and other freemen of England, by such exorbitant, martial proceedings, after all these statutes, judgments, with the late Remonstrances, Declarations, Leagues, Covenants, and solemn Oaths of the Lord Protector himself and others against them, yea after the many years wars and heavy taxes imposed on the nation for the maintaining an inviolable preservation of these fundamental laws, liberties, and rights against all Arbitrary Commissions and Proceedings whatsoever; he humbly submits to your own impartial resolutions and consciences. And thereupon this Defendant prays his dissolution from any such further proceedings against him, without a lawful Jury and Trial by his Peers. And that you will be pleased, after deliberate consideration of the premises, to reverse and recal that arbitrary, unrighteous, bloody Sentence of Death, ye have newly passed against him, without any lawful Indictment, Presentment, Trial, Confession or Conviction of Treason, which strikes at the root of the Fundamental Laws, Liberties, Franchises of all English Freemen, and cuts off all their necks at one stroke, transcending all the arbitrary, tyrannical proceedings of Strafford, Canterbury, and the late king Charles (whom

\* See No. 12, vol. 1, p. 89.

(i) Henry de Knyghton de Erent. Angliæ l. 5, p. 2718, 2726, 2727, 2728.

some of yourselves have impeached, censured, condemned, decapitated as the very worst, and greatest of Tyrants,) lest it become a most pernicious fatal precedent to posterity, to others, or your own destruction, and render you as execrable to all succeeding generations, as any formerly guilty of the like exorbitant proceedings.

Just and legal EXCEPTIONS to the Cause and Manner of the Illegal Judgment given against Dr. John Hewet; humbly tendered by him to the consideration of those Commissioners who denounced it.

That it is specially enacted by the Statute of Westminster the 1. ch. 12. and accordingly resolved in Book Pain 1. 2. 1, 5, 8, 9, 12, 13, 14, 15, 19, and the Year-Books therein abridged, by Stamford's Pleas of the Crown, l. 2. c. 60. Dyer, l. 205. a. 300. b. Coke's 2 Institutes, p. 177, 178, 179. and 3 Institutes, p. 217. 'That no man ought by law to be condemned, 'or put to death in case of treason and felony, 'for standing mute or refusing to plead, or put 'himself upon his trial, or for challenging 'more than 36 of the jury peremptorily; but 'only in these cases.'

1. When and where the person accused and arraigned, is a (a) notorious traitor or felon, and openly of evil name; and defamed thereof: But Dr. Hewet is no such person.

2. When and where the treason or felony for which he stands accused, is (b) notorious, evident, certain, or at least very probable, and already found upon oath against him by the presentment or indictment of an honest lawful Grand Jury, of his equals of the same county wherein he is arraigned, or confessed by himself: all which circumstances and evidences of guilt were wanting in Dr. Hewet's Case.

3. When and where the judges, (c) for the better satisfaction of their consciences, and discharge of their duties, do (as they ought by law,) first openly examine the evidences and witnesses, which prove the person arraigned guilty of the fact of treason or felony for which he stands indicted, before they proceed to give judgment against him for not pleading, or standing mute. Which was not done in this Case, there being neither witnesses nor evidence produced in open Court to prove him guilty.

4. When and where there is a legal Indictment found against the party arraigned, which being read openly to him in Court, the traitor or felon thereupon doth either (d) wilfully or maliciously stand mute, refusing to answer or plead thereunto, (which the (e) jury there im-

pannelled to try him, are by law to enquire of, find and return upon oath :) Or, peremptorily challengeeth above 35 of his jury, without any legal cause or exceptions; or else obstinately (f) refuseth to put himself upon a legal trial by God and his country, (being a jury of honest and lawful men of the county then and there present, (g) returned by the sheriff alone, not justices or others, for to try him: to whom by law he may take both his legal and peremptory challenges) saying, that he will be tried only by God and the Bench; or, by God and the Court, or judge; or (h) by God and the Virgin Mary, or Holy Church: there being no precedent extant in records, or law-books, of any traitor or felon hitherto condemned to die, for standing mute, or not pleading, only for refusing to be tried by God and the honourable Bench, judges, Court alone, without any Indictment or jury; and for earnestly importuning the Court and his judges, that he may be tried only by God and his country, and on an Indictment by a jury of his equals according to law, casting himself wholly upon such a trial, after a lawful presentment and Indictment first found against him by a jury. The only reason rendered in and by the forecited statute and law-books of all judgments hitherto given against any traitor or felon, for standing mute, and refusing to plead, being this, (i) 'Because he peremptorily refuseth to stand to 'and be tried by the law of the land, and a due 'and lawful trial by a jury of his equals, according to the course of the common-law, 'and the great Charter.' But Dr. John Hewet is now condemned to be executed as a traitor by the High Court of Justice, 'contrary to all 'former precedents, statutes, law-books, and 'the only legal reason in former times of all 'judgments rendered against any persons in 'such cases: even for his frequent, earnest, importunate demanding and peremptory casting of himself, upon a due legal trial by God 'and his country, and an indifferet jury of 'his equals, according to the common statute 'laws and Great Charter of England, after a 'legal presentment and Indictment to be first 'found against him: and for refusing to wave 'this his legal trial' (to the public prejudice of all other English freemen) and, 'cast himself wholly and solely upon a new kind of arbitrary 'trial,' contrary to law, by God and the Bench, Court, and the commissioners themselves, (who would be both his Grand and Petty Jury as well as Judges) 'without and before any legal 'presentment, Indictment, or jury impanelled 'or returned to try him.' Therefore he humbly conceives this Judgment denounced against him upon this reason and ground alone, to be most erroneous, illegal, unjust, repugnant to all for-

(a) West. 1. c. 12. Stamford, l. 2. c. 60. f. 149. b. Coke's 2 Instit. p. 177. 179.

(b) Coke's 2 Instit. p. 177. Stamford, f. 150. a.

(c) Stamford, l. 2. c. 60. f. 150. a.

(d) Stamf. l. 2. c. 60. Coke's 2 Instit. p. 177, 178.

(e) Stamford, f. 150. b. 43. Ass. 30. Fitz.

Corone, 225. 8 H. 4. 2. Coke's 2 Instit. p. 178.

21 E. 3. 18.

(f) Coke's 2 Instit. p. 178.

(g) 11 H. 4. c. 11. Coke's 3 Instit. 32. 33.

(h) 4 E. 4. 11. 7 E. 4. 29. Brook Pain 14.

(i) W. 1. c. 12. 8 Instit. p. 217. 2 Inst. p. 179. 8 E. 3. Itin. Nort. Fitz. Corone, 359. 14 H. 4, 7. Brook Pain. 14, 15.

mer precedents, and to one this very week at the sessions in the Old-Bailey by judgment of some of his judges at Westminster, and of very dangerous consequence. Whereupon he humbly prays the suspension and reversal thereof as unjust, and merely void in law, by the statutes of 25 E. 1, cap. 2, and 42 E. 3, c. 1, lest the execution of him for a traitor upon this judgment and ground, should prove wilful murder, and a shedding of innocent blood in the account both of God and man.

What therefore the prophet Jeremiah alleged to the Princes of Judah, in a like case, when they resolved him at first to be worthy of death, without a legal hearing or trial, Jerem. xxvi. 11, 14, 15. 'As for me, behold, I am in your hands, to do unto me what seemeth good and meet unto you: but know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon yourselves, and upon this city, and upon the inhabitants thereof: whereupon the princes and people, upon second and better advised thoughts, altered their former bloody sentence, saying: 'This man is not worthy to die; for he hath spoken unto us in the name of the Lord our God. And the hand of Ahikam was with Jeremiah, that they should not give him into the hand of the people to put him to death: shall be my allegation to those who have passed this unjust sentence of death against me; and if it produce not the like effect for their reversal thereof, and my preservation from its violent bloody execution, as it did in this prophet's case; I shall then earnestly pray to God, that it may not

draw down from heaven that heavy sentence of wrath upon them, nor that sad judgment upon the whole land of England which this prophet denounced against Jehoiakim, Jer. xxii. 17, 18, 19, 'But thine eyes and thine heart are but for thy covetousness, and for to shed innocent blood, and for oppression and violence to do it. Therefore thus saith the Lord concerning Jehoiakim; they shall not lament for him, saying, ah my brother, or ah sister, ah Lord, or ah his glory: but he shall be buried with the burial of an ass drawn and cast forth beyond the gates of Jerusalem.' And that which the prophet Joel threatened to Egypt and Edom, Joel iii. 19, 'Egypt shall be a desolation, and Edom a desolate wilderness, for their violence against the children of Judah, because they have shed innocent blood in the land.' And that against all rules of law and justice, in that they mitle, the High Court of Justice, which will not palliate,\* but aggravate the injustice acted in it, and make it more detestable both to man and God himself, who avers this for an undoubted truth;

Gen. ix. 5, 6. 'Surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man'†

\* Eccles. iii. 16, 17. Psal. xciv. 20, 21, 23.

† See the account of the Sentence and Execution at the end of the next Case.

## 204. The Trial of JOHN MORDANT, esq. before the High Court of Justice, for High-Treason: 10 CHARLES II.\* the 1st of June, A. D. 1658.

THE Serjeant at Arms was commanded to bring John Mordant, esq. to the bar, who was brought accordingly.

\* Mordant's name occurs prominently in some of the Examinations respecting this Plot which are published in the 7th volume of Thurloe's State Papers.

"There was a young gentleman, John Mordant, the younger son, and brother, of the earls of Peterborough; who having been too young to be engaged in the late war, during which time he had his education in France and Italy, was now of age, of parts, and great vigour of mind, and newly married to a young beautiful lady of a very loyal spirit, and notable vivacity of wit and humour, who concurred with him in all honourable dedications of himself. He resolved to embrace all opportunities to serve the king, and to dispose those upon whom he had influence, to take the same resolution; and being allied to the marquis of Ormond, he did by him inform his majesty of his resolution, and his readiness to receive any

Lord President (Lisle). Mr. Attorney, what have you to say against the prisoner at the bar?

commands from him. This was many months before the marquis's journey into England.

"Mr. Stapley was well known to Mr. Mordant, who had represented his affections to the king, and how useful he might be towards the possessing some place in Sussex, and his undertaking that he would do so, by a letter to the king, under Mr. Stapley's own hand: and thereupon Mr. Mordant desired, that his majesty would send a commission for the command of a regiment of horse to him; which he would provide, and cause to be ready against the season he should be required to appear: which commission, with many others, was sent to Mr. Mordant; and he delivered it to Mr. Stapley; who was exceedingly pleased with it, renewed all his vows and protestations; and it is still believed that he really meant all he pretended. But he had trusted some servant, who betrayed him; and being thereupon sent



*Attorney General (Prideaux).* My lord, I have prepared a Charge of High-Treason against the gentleman at the bar, which I desire may be read.

for by Cromwell, his father's fast old friend, was by him so cajoled by promises and by threats, that he was not able to withstand him; but believing that he knew already all that he asked him, he concealed nothing that he knew himself; informed him of those of the same country who were to join with him; of whom some had likewise received commissions, as well as himself; and in the end he confessed, 'that he had received his commission from Mr. Mordant's own hand.' Before this discovery Mr. Mordant had been sent for by Cromwell, and very strictly examined, whether he had seen the marquis of Ormond during his late being in London; which, though he had done often, he very confidently and positively denied, being well assured that it could not be proved, and that the marquis himself was in safety: upon which confident denial, he was dismissed to return to his own lodging. But upon this discovery by Stapley, he was within two days after sent for again, and committed close prisoner to the Tower; and new men were every day sent for, and committed in all quarters of the kingdom; and within some time after, a High Court of Justice was erected for the trial of the prisoners, the crimes of none being yet discovered; which put all those who knew how liable they themselves were, under a terrible consternation.

"Before this High Court of Justice, of which John Lisle, who gave his vote in the king's blood, and continued an entire confident and instrument of Cromwell's, was president; there were first brought to be tried, John Mordant; sir Harry Slingsby, a gentleman of a very ancient family, and of a very ample fortune in Yorkshire; and Dr. Hewet, an eminent preacher in London, and very orthodox, to whose church those of the king's party frequently resorted, and few but those. These three were totally unacquainted with each other; and though every one of them knew enough against himself, they could not accuse one another, if they had been inclined to it. The first and the last could not doubt but that there would be evidence enough against them; and they had found means to correspond so much together, as to resolve that neither of them would plead to the impeachment, but demur to the jurisdiction of the Court, and desire to have counsel assigned to argue against it in point of law; they being both sufficiently instructed, how to urge law enough to make it evident that neither of them could be legally tried by that Court, and that it was erected contrary to law. The first that was brought to trial, was Mr. Mordant. After his arraignment, by which he found that the delivery of the commission to Stapley would be principally insisted on, and which he knew might so easily be proved, he, according to

### The Substance of the IMPEACHMENT.

*Mr. Phelps (Clerk.)* John Mordant, esq. stand at the bar, and hear your Charge.

former resolution, refused to plead not-guilty; but insisted, 'that by the law of the land he ought not to be tried by that Court;' for which he gave more reasons than they could answer; and then desired, 'that his counsel might have liberty to argue the point in law; which of course used to be granted in all legal Courts. But he was told, 'that he was better to bethink himself; that they were well satisfied in the legality of their Court, and would not suffer the jurisdiction of it to be disputed; that the law of England had provided a sentence for such obstinate persons as refused to be tried by it; which was, that they should be condemned as mutes; which would be his case,' if he continued refractory: so he was carried back to the Tower, to consider better what he would do the next day. Sir Harry Slingsby was called next. He knowing nothing of, or for the other resolution, pleaded not-guilty; and so was sent to the prison to be tried in his turn. Dr. Hewet, whose greatest crime was collecting and sending money to the king, besides having given money to some officers, refused to plead, as Mr. Mordant had done, and demanded that his counsel might be heard; and received the same answer, and admonition, that the other had done; and was remitted again to prison.

"Those courts seldom consisted of fewer than twenty judges; amongst whom, there were usually some, who, out of pity or for money, were inclined to do good offices to the prisoners who came before them; at least to communicate such secrets to them, as might inform them what would be most pressed against them. Mr. Mordant's lady had, by giving money, procured some in the number to be very propitious to her husband: and in the evening of that day the trial had been begun, she received two very important advices from them. The one, 'that she should prevail with her husband to plead; then his friends might do him some service: whereas, if he insisted upon the point of law, he would infallibly suffer, and no man durst speak for him.' The other, 'that they had no sufficient proof to condemn him upon any particular with which he stood charged, but only for the delivery of the commission to Stapley; and that there was to that point, besides Stapley, one colonel Mallory, whose testimony was more valued than the others.' This Mallory had the reputation of an honest man, and loved Mr. Mordant very well, and was one of those who were principally trusted in the business of Sussex, and had been apprehended about the same time that Stapley was; and finding, upon his first Examination, by the questions administered to him by Thurlow, that all was discovered, he unwarily confessed all that he knew concerning Mr. Mordant;

A **CHARGE** of High-Treason against John Mordant of Clement Danes, in the County of Middlesex, Esq. as followeth, viz.

"That John Mordant, late of the parish of Clement Danes, in the said county of Middle-

sex, esq. minding and intending to embroil this Commonwealth in new and intestine wars and seditions, on the 30th of April now last past, and at divers other days and times since the 10th of October, 1656, and before the said 30th of April last, as a false traitor and enemy to

having been himself the person principally employed between him and Stapley. He was brought in custody from the Tower, to give in evidence against Mr. Mordant, with an intention in the Court, after he had done that good service, to proceed as strictly against himself, though they promised him indemnity.

"The lady, having clear information of this whole matter, could not find any way that night to advertise her husband, that he should no more insist upon the want of jurisdiction in the Court. For there was no possibility of speaking with, or sending to him, during the time of his trial. Therefore she laid aside the thought of that business till the morning, and passed the night in contriving how Mallory might be prevailed with to make an escape; and was so dextrous, and so fortunate, that a friend of hers disposed the money she gave him so effectually, that the next morning, when Mallory was brought to the hall to be ready to give in his evidence, he found some means to withdraw from his guard, and when he was in the crowd he easily got away.

"She had as good fortune likewise to have a little note she writ concerning the other advice, put into her husband's hand, as he passed to the bar; which having perused, he departed from his former resolution; and after he had modestly urged the same again which he had done the day before, to spend time, and the President, in much choler, answering as he had done, he submitted to his trial; and behaved himself with courage; and easily evaded the greatest part of the evidence they had against him; nor could they find proof, what presumption soever there might be, that he had spoken with the marquis of Ormond; and he evaded many other particulars of his correspondence with the king, with notable address. That of the commission of Stapley was reserved to the last; and the commission being produced, and both the hand and the signet generally known, by reason of so many of the like, which had fallen into their hands at Worcester, and by many other accidents, Mr. Stapley was called to declare where he had it; and seeing himself confronted by Mr. Mordant, though he did, after many questions and reproaches from the counsel that prosecuted, at last confess that he did receive it from Mr. Mordant; yet he did it in so disorderly and confused a manner, that it appeared he had much rather not have said it; and answered the questions Mr. Mordant asked him with that confusion, that his evidence could not be satisfactory to any impartial judges. Then Mallory was called for; but by no search could be found; and they could not, by their own rules, defer their sen-

tence. And it so fell out by one of the judges withdrawing upon a sudden fit of the stone, that the Court was divided, one half for the condemning him, and the other half that he was not Guilty; whereupon the determination depended upon the single vote of the President; who made some excuses for the justice he was about to do, and acknowledged many obligations to the mother of the prisoner, and, in contemplation thereof, pronounced him innocent for ought appeared to the Court. There was not in Cromwell's time the like instance; and scarce any other man escaped the judgment, that was tried before any High Court of Justice." ["Echard affirms that there is not the like instance of acquitting a prisoner by a High Court of Justice, as that of Mordant; what does he take the earl of Norwich and Sir John Owen to be?" Oldmixon.] And he was so offended at it, that, contrary to all the forms used by themselves, he caused him to be kept for some months after in the Tower, and would willingly have brought him to be tried again. For, within a day or two after, Mallory was retaken, and they had likewise corrupted a Frenchman, who had long served him, and was the only servant whom he had made choice of (since he was to be allowed but one) to attend him in the prison; and he had discovered enough to have taken away his life several ways. But the scandal was so great, and the case so unheard of, that any man, discharged upon a public trial, should be again proceeded against upon new evidence for the same offence, that Cromwell himself thought not fit to undergo the reproach of it, but was in the end prevailed with to set him at liberty. And he was very few days at liberty, before he embarked himself as frankly in the king's service as before, and with better success." Clarendon.

And afterwards the noble Historian, in relating the measures taken for effecting the Restoration of Charles the second, says:

"Mr. Mordant, who had so lately his head upon the block, was more active than any man; and was so well trusted by men of all conditions, upon the courage of his former behaviour, that he had in truth very full engagements from very good men in most quarters of the kingdom, that if the king would assign them a day, and promise to come to them after they were embodied, they would not fail to appear at the day. Whereupon, Mr. Mordant ventured himself to come in disguise to the king to Brussels, to give him a clear account how his business stood, and what probability there was of success, and likewise to complain of the want of forwardness in some

Oliver, then and yet Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging, and to this Commonwealth; together with Henry Bishop, late of Parham, in the county of Sussex, gent, Hartigil Baron, and Francis Mansel, and divers others, their complices, at the parish of Clement Dances aforesaid, and at divers other places, did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir up and raise war against the said Oliver, then and yet Lord Protector of this Commonwealth, and against the government thereof, as the same was established, and to alter and subvert the same; and did also then and there, as well before as after the said 30th of April last past, and after the 10th of October, 1656, traitorously, advisedly, and maliciously declare, publish, and promote Charles Stuart, eldest son of the late king Charles, to be king of England, Scotland, and Ireland, &c. and did then and there traitorously, advisedly, and maliciously hold intelligence and correspondence with the said Charles Stuart. All which said treason and treasons he the said John Mordant, the said 30th of April last, and other the times and places aforesaid, and after the said 10th of October, 1656, at Clement Dances, and other places, did traitorously declare by Overt-Act, that is to say, by conferring with J. Stapley esq. and Henry Mallory, and others, how to effect the same; and did then and there encourage the said John Stapley and Henry Mallory, and others, therunto; and did deliver Commissions to several persons in the name of, and as from the said Charles Stuart, concerning the raising of forces, and levying war against the said Oliver, then and yet Lord Protector, and against this Commonwealth: All which said treason and treasons are contrary to the statute in that case made and provided. With which said treason and treasons, he the said Attorney-General, for and on the behalf of the said Oliver, then and yet Lord Protector, and on the behalf of the said Commonwealth, as aforesaid, doth charge and impeach the said John Mordant. And the Attorney-General prayeth, That he the said John Mordant may be put to answer; and that such proceedings, trial, and judgment may be had against the said Mordant, as is agreeable to law. And the said Attorney-General doth aver that the said John Mordant

of those upon whom the king most relied, to encourage other men, and to desire that his majesty would, by him, require them to concur with the rest. It appeared, by the account he gave, that there were very few counties in England, where there was not a formed undertaking by the most powerful men of that county, to possess themselves of some considerable place in it; and if any of them succeeded, the opportunity would be fairer for the king to venture his own person, than he yet had had, or than he was like to have, if he suffered those who were now in the government, to be settled in it."

VOL. V.

is a person by name appointed by his Highness and Council to be proceeded against."

*Mr. Phelps.* John Mordant, esq. thou standest here charged with High-Treason against his highness the Lord Protector and the Commonwealth. You have heard the Charge read: The Court demands your positive answer thereto, whether Guilty, or Not Guilty.

*Mordant.* My lord, I desire I may hear the Commission read, by which you sit.

*Ld. Pres.* You are impeached of high-treason: we require your answer.

*Mordant.* I desire the Commission may be read, and the Commissioners' names.

*Ld. Pres.* You are to be tried by the laws of England, act of parliament, and Commission under the great seal of England, in pursuance of that act.

*Mordant.* I claim it as my right; I am ignorant in law; I desire it may be read.

*Ld. Pres.* It is not granted to any.

*Mordant.* My lord, will you take away that liberty, that we shall not know by what Commission we are tried, and who are our judges? I desire I may not be made the first precedent.

*Ld. Pres.* It is visible who are your judges; they are named by act of parliament: we are your judges.

*Mordant.* My lord, if the act specify any such thing that it may not be read, I have done. I desire it may be read, that I may have a legal and just proceeding.

*Ld. Pres.* The act of parliament doth not require it.

*Mordant.* The Act doth not deny it.

*Ld. Pres.* You shall have all the privileges that may be: but you must first plead.

*Mordant.* My lord, I demand this, to hear the Commission read.

*Att. Gen.* My lord, pray let him know what is done, to warn him, lest he fall into the same condemnation. There was one but a little before you that demanded the same thing, and the Court hath ruled it otherwise; and he hath received his sentence. I tell you of it, that you may beware, and know how to carry yourself. If Mr. Mordant will be pleased to answer whether or no guilty of those crimes, then he shall have a fair trial, and full examination: if otherwise, the same sentence must be required as before; that is, upon refusal, the judgment pronounced for high-treason.

*Mordant.* My lord, I humbly crave the Act may be read.

*Att. Gen.* The Act is public; the Court are not to give you an account of their authority, or the way of their proceedings. They require your answer.

*Mordant.* My lord, shall I not know by what Law I am tried, nor by what Act, nor by what Commission?

*Ld. Pres.* You seem to be a young gentleman: I wish rather you would plead Not Guilty, or make an ingenuous confession.

*Mordant.* My lord, this is the first time that I have been before any Court in my life. I desire that my reason may be convinced:

3 N

either assign me counsel to argue it with this learned counsel; and if they convince my counsel, I shall submit: or, if this counsel will say the law doth debar me the hearing of the Commission and the Act read to me, I shall refer it to the judges of the law, and by their opinions I will stand or fall.

*Att. Gen.* My Lord President, you have offered that gentleman very seasonable advice: I wish he may be capable of it. And in these debates, I wish he doth not lose those advantages that are really intended for him. For the Court, it is by act of parliament; and no judicature in England can require an account of their proceedings.

*Mordant.* My lord, pray give me leave to ask this question, Whether there is any precedent for this?

*Att. Gen.* By way of advice, I do acquaint you that there is no judicature in England superior to this, but the parliament immediately. You are here impeached of a very high crime, high treason; it may be a strain of youth: the first step to mercy is confession.

*Mordant.* My lord, I have heard that the judges of the law are the best and proper expositors of the law: and if they declare that this is the sense of the act, I will submit to the Court. If the Court will allow me counsel, I shall submit if my counsel be convinced. I desire to hear the Commission read.

*Att. Gen.* My lord, this gentleman was a fellow-prisoner with one that went before him; he walks after the same steps: I wish he may not run into the same error. These things were urged by Dr. Hewet, and the Court hath ruled that their authority is sufficient, and therefore, my lord, be pleased that this gentleman may plead.

*Mordant.* I am over-borne both for jury and counsel: I desire that my reason may be convinced. If this counsel will give it under their hands that this is law by the act of 1656, if you will say under your hands that this is law, that I must be excluded of jury and counsel, and that I must not know the Commission by which I am tried, I will proceed.

*Ld. Pres.* I am afraid you have received ill advice from others: possibly you know what is become of that prisoner that spake of counsel. We cannot assign you counsel as to matter of fact: the law and act of parliament have made us your judges, and therefore you are to plead.

*Mordant.* My lord, I desire that that Act may be read, to know whether I am to be excluded of jury and counsel: I refer it to this counsel.

*Att. Gen.* I doubt the gentleman is in jest: we are here to attend by command of his highness the Lord Protector; these gentlemen are all sworn by act of parliament. It is a little slighting of the Court, to appeal from the Court to the counsel: but, my lord, I beseech you he may forbear to say he is over-borne. You shall have justice done, if you will plead; if not, there was a Precedent but now.

If you please to put yourself upon the trial, you shall have a fair trial.

*Mordant.* My lord, convince me by this act that I am to lose the right of jury; I have not heard any reason why I must lose it.

*Att. Gen.* I do tell you the Court hath given judgment just now in the like case.

*Mordant.* I ask a precedent for this.

*Att. Gen.* I tell you a precedent, sir Henry Slingsby and Dr. Hewet.

*Mordant.* Is it a good precedent? If any give an ill precedent, it is reason I should debate it myself.

*Att. Gen.* I humbly conceive that this Court is your Court, and you ought to plead it.

*Mordant.* My lord, I desire I may be heard: the words are, That the respective commissioners, or the major part of them, are to meet, &c. I humbly conceive, without the whole I cannot be tried.

*Ld. Pres.* All this that you ask of us now, we have declared this morning already to one who was before you at the bar: the Quorum of this commission is seventeen, or any of them. We must require you again to plead.

*Mordant.* My lord, I desire a little patience. The number of the commissioners is seventeen: I conceive that must be very much strained in reason, that they must try, because it relates to the respective commissioners. Several persons were allowed counsel; I humbly desire counsel.

*Ld. Pres.* That is when there is matter of law. You have alledged nothing: you are now upon matter of fact.

*Mordant.* My lord, my Indictment is matter of law, and upon that I may safely demand counsel: I desire to have counsel as to my Indictment.

*Ld. Pres.* Your reason, and my reason, and all reason, must submit to the law: you are now upon matter of fact: the single question is, Guilty, or Not Guilty?

*Att. Gen.* My advice to you is, that you would put yourself upon your trial.

*Mordant.* I am not convinced at all, but forced upon it; and it is a hard thing: it is reason that my reason should be convinced. If this act doth say in any place that I must lose these privileges, or if the judges will declare it to be so, I will submit to it. If the judges will declare that I must be tried thus, God's will be done; I desire to stand and fall by the laws.

*Sol. Ellis.* I will tell you where his mistake is: he speaks of former trials, which we do not deny. But this gentleman will agree that it is in the power of parliaments, by acts of parliament, to alter those trials. We conceive that this act of parliament hath determined this very question: for, my lord, it is, that you shall examine upon oath, and thereupon proceed to conviction and final sentence, not by jury: and this act of parliament hath entrusted you to be both judge and jury. All Englishmen must submit to what the parliament hath done: and the parliament hath determined this ques-

tion, that you have power to examine upon oath, and thereupon to proceed to conviction, &c. If a jury was to do it, you were not to proceed to conviction. This gentleman says there is no precedent for it; but we say it was the same in queen Elizabeth's time: they proceeded to conviction and final sentence, when they proceeded against duke Hamilton, lord Capel, and Holland. Did not the parliament approve of what they did in that case as just, honourable, and lawful? Did not duke Hamilton, did they not all petition to the house? Did not the parliament order execution upon some, and cleared others? To say this is without precedent, when precedents are so frequent, I wonder that should be said. To that point of a jury: I must tell this gentleman he speaks of a jury, but hath not put himself upon a trial. After he hath pleaded Not Guilty, then it must be considered the manner of the proceeding; but to come before he plead Guilty, or Not Guilty, to desire a jury, this is a little to anticipate your judgment.

*Mordant.* I do not shun to be tried by the act of parliament, but refer myself to the judges, that those privileges of the Act may not be taken from me.

*Att. Gen.* The parliament hath thought fit to go this way, and it is not to be disputed; They that live in this nation are not to dispute it. If that gentleman will please to recollect himself, and not, my lord, thus expostulate and dispute with the court of justice, if he please to put himself upon a trial, if he thinks himself innocent, I think it is best; and if he refuse it, his sentence is from himself.

*Mordant.* I do not, my lord, dispute the power of the Court; but I desire my reason may be convinced, and that I may have counsel.

*Ld. Pres.* We are clearly of opinion, we have not power in this Case to appoint any other jury, not to summon a jury; we ourselves have taken an oath. You would do well to plead.

*Mordant.* My lord, I have but little to say; and that is, that, as that gentleman said, it was referred to the Court what jury I shall have, I desire, my lord, to know whether the Court doth intend to try me by a jury.

*Sol. Ellis.* They do not.

*Mordant.* Is the Court judge and jury?

*Att. Gen.* If you will deal ingenuously with the Court, I think that is best.

*Mordant.* Seeing I am here over-ruled, though not convinced in my reason, I shall demur to the Court, and plead Not Guilty. I desire a copy of my Indictment, and time to plead.

*Ld. Pres.* It was never done: for any Indictment of high-treason was never delivered to any prisoner.

*Mordant.* I urge my lord Coke for authority, for a copy of my Indictment.

*Mr. Phelps.* John Mordant, esq.; you stand here charged of high treason; to this Charge you plead Not Guilty: Is this your plea?

*Mordant.* Yes, I beg, my lord, that my ignorance of the laws may not prejudice me, not understanding or knowing any thing of the laws: And this granted me, I shall address to my justification.

*Att. Gen.* Do you stand to your plea, Not Guilty?

*Mordant.* Yes.

*Mr. Lechmere.* My lord, I shall shortly open the Impeachment. The Attorney-General hath exhibited a Charge of high treason against John Mordant, esq. viz. That he the said John Mordant intending to embroil this nation in new and intestine wars, the 30th of April last past, and at divers times since the 10th of October 1656, together with Henry Bishop, Hartgil Baron, &c. at the parish of Clement Danes, in the county of Middlesex, did traitorously, advisedly, and maliciously plot, contrive, and endeavour, First, to stir and raise force, and levy war against his highness the Lord Protector and the Commonwealth, to subvert and alter the government of the same. Secondly, that he did traitorously, advisedly, and maliciously declare, publish, and promote Charles Stuart to be king of England, Scotland, and Ireland. Thirdly, that he did traitorously, advisedly, and maliciously hold intelligence and correspondence with Charles Stuart; and that he did declare these treasons by overt-act, that is to say, by conferring with John Stapely and Henry Mallory how to effect the same, and did deliver several commissions from Charles Stuart to several persons; and this contrary to the statute. To this charge of high-treason the prisoner pleads Not Guilty: we are ready, my lord, to call our witnesses to prove him guilty of these several crimes, and with the leave of the Court, we shall call our witnesses.

*Att. Gen.* I wish Mr. Mordant had done this before, and made himself capable of more favour.

[Mr. Mordant then desired to have pen, ink, and paper, which was granted him.]

[John Stapely and Anthony Stapely were then called.]

*John Stapely sworn.*

*Att. Gen.* We produce this gentleman (I suppose he is well known to the prisoner) to prove the Charge: I desire he may declare what he knows. What do you know concerning the discourses of Mr. Mordant with you, touching the bringing in Charles Stuart?

*Stapely.* I have been in Mr. Mordant's company several times; and what I can say will not be much. Mr. Mordant did once tell me there was such a design as the bringing in of the king; and he did ask me if I did not know of such a thing. I told him no. He was pleased to tell me somewhat of it. I asked him if he was engaged in it; he told me he was not.

*Att. Gen.* What did he tell you concerning his being entrusted by the king therein?

*Stapely.* He told me the king wrote to him, to speak to his friends that they would be ready to assist him when he should come into England with force; which he told me was with 7,000 men. This was the chief of all.

*Att. Gen.* Did he not say that he had commissions from the king?

*Stapely.* He did not tell me so; but I have heard him say others had had commissions, two other gentlemen in Surrey.

*Att. Gen.* Did not he encourage you thereto? What arguments did he use?

*Stapely.* He spoke to me of it several times.

*Att. Gen.* After what manner?

*Stapely.* Only in commendation of the thing: I heard him say that if there were a necessity, Surrey folks would come into Sussex, to assist them.

*Att. Gen.* Who was present at any of these discourses?

*Stapely.* There was none but him and myself.

*Att. Gen.* At what place, and at what time?

*Stapely.* Near his own house, at several times. I have told you the main of the discourses.

*Mordant.* Mr. Stapely, about what time was this?

*Stapely.* Above a year since.

*Mordant.* Mr. Stapely, at what place was the encouragement made?

*Stapely.* I do not know what he means by encouragement: he only told me of it.

*Mordant.* I desire to know when I told you that I had received a letter to encourage my friends from beyond sea, and who was by?

*Stapely.* There was nobody by.

*Ld. Pres.* About what time did he tell you of this letter?

*Stapely.* About half a year since.

*Ld. Pres.* Who was by?

*Stapely.* Nobody, my lord.

*Sol. Ellis.* Did he tell you it was the king that wrote to him; and therefore it was just to assist him?

*Stapely.* I think I heard him say so; I cannot take my oath of it.

*Ld. Pres.* Did he tell you what considerable persons were concerned.

*Stapely.* I have heard him speak of some persons that were engaged in this design; sir Francis Vincent, and one Brown: he said that sir William Waller spake to him to speak to me.

*Ld. Pres.* When.

*Stapely.* Above a year since: It was since the parliament.

*Mordant.* My lord, I do not know sir William Waller.

*Anthony Stapely sworn.*

*Att. Gen.* What discourse have you had with Mr. Mordant touching Charles Stuart?

*Anthony Stapely.* We were about a quarter of a year ago at the Half-Moon tavern in

Aldersgate-Street: At that time there was no discourse about the business at all. After that he was speaking to me about the times, losses of privileges, great taxations, &c. wherein I agreed with him, and wished they might be better. I asked him if there was any way to help it. He said, Yea; and said that Charles Stuart was intending for England; and that would be a fair opportunity to redress all grievances. At Berkshire-House, there he was pleased to enquire concerning the affairs of Sussex, and in what preparation they were, in case the king of Scots should land. I told him I did not know; I had not been in the country lately; I did believe that there would not be an appearance suitable to his expectation. He told me something concerning Sarrey; that there was a considerable strength there, ready to assist us in Sussex, and join with us when any such thing should happen. He did say that he had delivered out four Commissions, three for horse, and one for foot; but to whom I know not: I dare not swear it; but it is to the best of my remembrance.

*Att. Gen.* What discourse past between you at the Half-Moon tavern in Aldersgate-Street about March last?

*Stapely.* It was the day that the Cavalier party were to depart the city: There was Capt. Mallory, myself and this gentleman, Mr. Mordant. And then he spoke again concerning Sussex; that the king of Scots coming was suddenly expected; and desired to know in what readiness we were. I told him I could not tell; but I did believe that things would be in as great a forwardness as the times would permit. It was agreed upon that some of our country should meet Mr. Mordant at Crawly, in Surrey, upon the Tuesday following.

*Att. Gen.* What was the end of your meeting?

*Stapely.* It was to consider further how things might be carried on, as to the business of Surrey and Sussex: There was an expectation of the landing of Charles Stuart; and he did say that he heard Charles Stuart was in a readiness. Mr. Mallory, myself, and Mr. Mordant, were to meet, further to debate of things. I understood it was for the business of the king; but it was not positively so expressed. He asked me how things went on in Sussex. I told him I could not satisfy him: Therefore we told him there should some of our country meet him at Crawly, to give him an account. He said there was a considerable force; but I never heard him speak of any number of horse or foot in Surrey.

*Mordant.* Mr. Stapely, I desire to know when I spoke to you of this?

*Stapely.* My lord, it was—I cannot tell the days: But it was suddenly after the breaking up of the parliament; all the discourses were since the breaking up of the last parliament.

*Mordant.* I desire to know where I spoke this, and who was by?

*Stapely.* As I take it the first discourse was at Long-Acre; but nobody by.

*Mordant.* I desire to know the time when I met him at the Half-Moon tavern.

*Stapely.* It was the day set for the departing of the Cavalier party out of town.

*Mordant.* I desire to know who was by?

*Stapely.* Captain Mallory.

*Mordant.* I desire to know whether I did meet at the place appointed.

*Stapely.* My brother and Mr. Mallory did not meet him, because my brother was sent for to Whitehall.

*Mordant.* I desire to know the witnesses to all he says?

*Stapely.* It was all private; only once at the Half-Moon tavern with captain Mallory.

*Att. Gen.* My lord, there was mention made of one captain Mallory, whom we did intend to have as a witness: He was committed upon this design being privy to it. It hath so fallen out that he is lately escaped. I desire that Mr. Sergeant at Arms, major Ellison, Tho. Tatlock, and Wm. Capput, may be sworn,

All four sworn.

*Att. Gen.* We do produce these witnesses for this end: Captain Mallory was a prisoner, and we did intend to make use of him here; but it hath so fallen out, that his guilty conscience hath made him to fly. Ask these concerning his being in custody, and endeavour of escape.

*Major Ellison.* My lord, captain Mallory was in custody, and a guard constantly set upon him, which guard was relieved every twenty-four hours. The manner of his escape I only had by relation. We have used all our endeavours to have found him since he is escaped: We did that night send presently to Southwark, to inns there, and laid wait for him; and sent to captain Mallory's brother-in-law, where he formerly lay, examined him, but all in vain. Where we had any intimation of any relation of his, we did send to search for him.

*Serj. Dan.* My lord, upon the 28th of May last, since the escape of captain Mallory, I received a warrant from the council, commanding me to use all diligence for apprehending captain Mallory: I have accordingly endeavoured it: Not knowing his relations, I did not speak to them. I have used all means I could; but cannot find him.

*Tho. Tatlock.* My lord, captain Mallory went away about nine o'clock at night: He went away in a black suit and cloak.

*Will. Capput.* All that I know, my lord, is, That captain Mallory was a prisoner, and changed his habit and hair, went away, and left money in the window to pay for his lodging.

*Att. Gen.* My lord, the intention is to shew you captain Mallory was a prisoner, is escaped, and what means have been used for his apprehension. Officer, pray swear Mr. Scobell.

Mr. Scobell sworn.

*Att. Gen.* My lord, Mr. Scobell was one of

the justices of the peace that took captain Mallory's examination upon oath.

*Mr. Scobell.* My lord, captain Mallory gave in information upon oath, before my lord Goffe and myself, upon the twenty-first of April last; and upon his oath did inform us, That about the beginning of March last capt. Anthony Stapely and himself being at the Half-Moon Tavern, John Mordant, esq. being upon the Exchange, was sent for to Mr. Stapely, and that he came. Thereupon Mr. Stapely presented capt. Mallory to Mr. Mordant as a gentleman that was interested in Charles Stuart's design, together with Mr. Stapely, that was his brother: He said that by that brother he meant John Stapely esq. Thereupon he informed us, That Mr. Mordant did demand of capt. Mallory in what readiness the horse that were to be raised in Sussex were. Mr. Mallory informed us, That to that he returned an answer, that they were not in so good a posture as he did believe Mr. John Stapely had represented to Mr. Mordant, but doubted that it would fall much short. Mallory told us, That at that answer Mr. Mordant did much wonder, because he said Charles Stuart the king was in a very good posture; and that there was a daily expectation of his coming over with forces; and that thereupon Mr. Mordant did desire that there might be a meeting in some convenient place between him and Mr. Stapely, and some others of that county of Sussex, as should be thought fit. My lord, it was (he said) to this end, That they might confer together, and understand how the affairs stood in reference to the counties of Sussex and Surrey, that they might the better assist each other in the intended insurrection. He did inform us, my lord, That accordingly it was agreed there should be a meeting upon the Tuesday following at Crawly; and, in order therunto, he said that Mr. Anthony Stapely and himself did speak with Mr. John Stapely to have a meeting accordingly at Crawly upon the Tuesday following, and they did agree to it. He said that they should meet with Mr. Mordant at Crawly; but in the mean time Mr. John Stapely being sent for to Whitehall, that meeting was prevented. My lord, this is all.

*Ld. Pres.* Mr. Mordant, would you ask Mr. Scobell any question?

*Mr. Scobell.* I suppose that Mr. Mordant's asking me any question will not advantage him, or that my testimony is disadvantageous to him: For all that I have spoke was the same that Mallory declared unto me, and my lord Goffe, as justices of the peace.

*Mordant.* My lord, I neither know this gentleman, nor Mr. Mallory, upon my oath.

*Att. Gen.* Mr. Anthony Stapely, were you with capt. Mallory and Mr. Mordant at dinner together at the Half-Moon?

*Mr. A. Stapely.* My lord, capt. Mallory was once there; but not at dinner.

*Mr. Sol. Ellis.* The Attorney-General hath exhibited a Charge of high-treason against the prisoner at the bar; that was to raise force

against the government, and publish Charles Stuart to be king, and held correspondence with him.

*Mordant.* My lord, you have heard the witnesses. The first gentleman, Mr. John Stapely, he was pleased to urge against me, that I said Charles Stuart writ to me to engage my friends, but said not that he saw the letter, or that any one was by. He did not name the time or place, but at random; but that I said so. Being asked about Commissions, he denies that I told him I either had Commissions, or delivered any. He says I gave him encouragement to this engagement, or what he calls it, I know not; but he doth not say what kind of encouragement it was; he doth not say I promised him money or preferment. He says he heard I engaged two other gentlemen, sir Francis Vincent and col. Brown. He was asked, if any was by at these discourses; he said none was by. My lord, this is a single evidence: he says it was a year or more since; he says I said, I was entrusted by Charles Stuart about the latter end of the last winter. For Mr. Anthony Stapely, he urges against me, that at his lodging I discoursed with him, that the way to help us was to bring in Charles Stuart: he says, that I said in Surry was a considerable strength to join with Charles Stuart, which if true, might prove troublesome to me; but I have not been in Surry this year and half. He says, only to the best of his remembrance, I said I had three or four Commissions; but he says it is to the best of his remembrance, but doth not say he saw the Commissions, and will not swear whether they were for horse or foot. He says, at the Half-Moon I spake with him and Mallory; who that is, I have already spoke to. He says, I did not name the number of any forces that were ready: He says, that we agreed to meet on the Tuesday following at Crawly with Mr. Mallory, but says that I was not there. My lord, I do not know that place; he says it is in our country, but it is not: he says it was his brother John Stapely that was to meet me. He says, it was not about any positive thing why I was to meet there, but in general to carry on things about the intended design. He says not that I said it, but that I said I heard that Charles Stuart would land with a considerable party. He says, it was to debate things in general: He said, it was not said about Charles Stuart, that he was not mentioned, but he supposed it to be so. He says positively, that I spake of any number of horse or foot, or any thing of that kind. I asked him, when I first spoke of this; he returned no time, would not say any positive time, but said all was since the breaking up of the parliament. I asked him who was by; he said nobody, all was private. He says, the time when we were at the Half-Moon was near the time that those that served the late king were banished. He says positively I did not meet at the place appointed, and he gives the reason, a very insufficient one, because his brother was sent for up; that could not hinder

me. He waves his own meeting: he says all was private. I submit it all to this honourable court.

*Mr. Sol. Ellis.* The charge is for levying of war to alter the government, and embroil us again in a new war: to which he pleads Not Guilty. For the proof of this we have offered to you witnesses: I shall take them in order as the gentleman did at the bar. John Stapely said, Mr. Mordant said the king writ to him to encourage and engage his friends to assist him at his coming; but says not the time when this was done. He says he did not see the letter, but says Mr. Mordant told him he had a letter; all the discourses (because he says there was no time, it agrees that they were since the tenth of October 1656, and so it is clear within this act, and within your jurisdiction. Now see how it was carried on: After he had told him this, how doth he encourage him in his telling him the justice of the cause, the persons engaged therein, and of sir William Waller! Then, my lord, he told them, if the forces of Sussex were not sufficient, that the Surry forces would come to assist them for the coming in of Charles Stuart: this both John and Anthony Stapely. So that we conceive, under favour, that John Stapely and Anthony Stapely do agree in most of the circumstances. Anthony Stapely says, that Mr. Mordant came to him, tells him there were great grievances. Ay, says he, but how shall it be remedied? Tells him that Charles Stuart intended to come to England with a great force, which would redress them. He asked him how the business was in Sussex? He said it was not in so good a posture as he expected: he said that Surry forces should join with Sussex. My lord, I leave it nakedly to you; if you find this to be true, we submit it to you, and Mr. Attorney-General will pray what his place requires.

*Att. Gen.* You have heard the business, this gentleman hath interposed himself where he was not called; it is a happiness this business was discovered. Upon this evidence I leave it to your justice, and as you shall judge. I shall say no more.

*Mordant.* My lord, I will speak to you very short, it is this: That to all this, though it be urged against me by the ablest men in the land, yet there is but one witness in a manner, and that differing in many circumstances—[Here he was interrupted]. My lord, I leave it to you, I remit my life into your hands, resting and believing your lordships will deal with me as one of this nation, an English freeman. I leave it to you and do submit.

*Ld. Pres.* Withdraw the prisoner.

Proclamation to adjourn into the Painted Chamber.

After a little debate in the Painted Chamber, they adjourned till the morrow.

June 2, 1658.

The Lords Commissioners met in the Painted Chamber about ten in the morning, and there continued till about four o'clock in the



afternoon, and then adjourned into Westminster Hall, where proclamation being made, the names of the Lords Commissioners being read :

Mr. Serjeant was commanded to bring Dr. Hewet, sir Henry Slingsby, and Mr. Mordant to the bar. Which was accordingly done. Proclamation for silence was made.

*Att. Gen.* My lord, as for sir H. Slingsby, and Mr. Mordant, you have heard the impeachment read, and their pleas ; I have given in the evidence, I pray your Judgment as to them : as for the other, you have heard the impeachment and no defence ; I pray your justice.

*Ld. Pres.* Sir H. Slingsby, kn't. thou hast been impeached on the behalf of the Lord Protector and this Commonwealth, of high treason : to which thou hast pleaded Not Guilty which the Court hath taken into consideration : What hast thou to say further, why this Court should not proceed to Judgment.

*Sir H. Slingsby.* My lord, I humbly desire I may be tried by a jury, for I must say, you are my enemies, pardon the expression, if not so, why did you sequester me, and sell my whole estate ? And why did you deny me the act of oblivion ? There is no man would willingly appeal to his adversaries : there are some among you that have been instrumental in my sequestration, and in the selling of my estate, for which they gave me no reason but this, That I would not compound, when I thought not fit so to do, when there was no establishment or settled peace : if I had compounded, I had not been sure whether I might not have compounded over again. My estate hath been sequestered and sold. Now to be my judge and jury—I humbly pray, being a commoner, I may be tried by commoners.

*Ld. Pres.* Sir H. Slingsby, I am not to hear you us to any of these things (you have pleaded already) ; this is not a time for pleading, but a time of judgment ; therefore I must require your silence, and hear me a few words.

#### The Lord President's Speech.

“ Sir H. Slingsby, I am really and truly afflicted for your sad condition ; but when I consider the nature of your offence, with the circumstances and aggravations of your treason committed ; when I consider your person, and that such a person as you are should be instrumental in so detestable a conspiracy, and when I think of that judgment that must be given against you ; methinks you are one of the saddest spectacles that ever I beheld in all my days : I beseech God that you may seriously lay it to your heart with sorrow and repentance, and that you may be more sensible of what you have done, than of what you are to suffer.

“ Sir, was it not a great aggravation of the Egyptians, that when God had declared himself by so many signs and wonders on the behalf of the Israelites, that yet notwithstanding they would still pursue Moses and Israel ? was not this a great aggravation of their sins.

“ Who is so great a stranger in this nation

as to be ignorant what God hath done amongst us, by a series of wonderful providences so many years together, against that very party who are still hatching of treasons and rebellions amongst us ? It grieves my very soul to think of it, that after so many signal providences, wherein God seems to declare himself, as it were by signs and wonders, that your heart should be still hardened, I may say more hardened than the very hearts of the Egyptians : for they at length did not only see, but confessed that the Lord fought against them ; but you, O that you would confess, and give glory to God ! You cannot chuse but see that the Lord fights against you, that the stars in their courages fight against you ; and yet you will not see, you will not confess, until destruction overtakes you. This is a sad lamentation, and I beseech God that you may seriously consider it.

“ Sir, if the signal and the wonderful providences of God will not deter you, yet methinks national considerations should deter you from such a treason as this is. Charles Stuart is in confederacy with Spain against England ; he is in confederacy with that great popish interest. Is it imaginable that an Englishman, that a protestant should assist such a confederacy as this is ? Yet that which is not imaginable in itself, is here clearly and evidently proved before us.

“ Sir Henry Slingsby, there are three witnesses, major Waterhouse, captain Overton and lieutenant Thompson ; two of them full in evidence as to every charge against you, and three of them as to some of the charges ; and besides, your own confession at the bar, full in proof against you. Did it not clearly appear in proof before us, that you promoted Charles Stuart to be king of England ? Did it not clearly appear before us, that you endeavoured to betray the garrison of Hull to Charles Stuart ? Did it not likewise clearly appear before us, that you endeavoured to withdraw the officers, and some of the soldiers of that garrison from their obedience to his Highness, and to make a mutiny in that garrison, and all the circumstances did clearly appear ? Was it not proved before us, that you offered a commission to major Waterhouse, and promised him a commission in the first place, and a second to captain Overton, and a deputation to the third ? and what you promised, did you not make it good ? Did you not with your own hand offer a commission sealed, and said it was from Charles Stuart ? And did you not only encourage him, by telling him that he was coming into England with a considerable force ; but did you not promise also that upon his landing, 5,000*l.* should be paid to major Waterhouse ? All these things were clearly proved before us.

“ Sir, what said you to this proof ? You confessed upon the matter all, in effect all ; but only some things you said by way of excuse, and I shall truly relate them all. All you did, you told us was but in jest. What, Sir, if those discontented English that complied with Spain in queen Elizabeth's days in eighty-eight, had

said they had been in jest, what would you have thought of that, Sir? What if those Jesuited Papists that would have blown up the Parliament House upon the 5th of November, with barrels of gunpowder, had said that they had brought in those barrels in jest; what would you have thought of it? Sir, be not deceived: As a man sows, so shall he reap; you have sowed treason and rebellion, and you are now come to reap the fruit of it.

"And, Sir, you told me you did not own the government, you were a prisoner, and therefore could not be bound by the laws of that government. Sir, doth not every Englishman owe a natural allegiance to the Supreme Magistrate of England? Is not every Englishman, whether in prison or out of prison, bound by the laws of England? Sir, if you own not the government of England, that is an offence in itself, a great offence; and would you make an offence against the government to be an excuse or justification for treason?"

"The last thing you said was this, You told us you were trepanned into it. Sir, did not you yourself of yourself promise a Commission to major Waterhouse? Did you not of yourself offer five thousand pounds to be paid as soon as Charles Stuart landed upon English ground? I shall name those worthy gentlemen, for honour's sake to them, that had a hand in this discovery. It was that prudent and faithful governor of Hull, colonel Smith, that had a hand in it. There were those worthy and faithful commanders, who were here in court, major Waterhouse, captain Overton, and lieutenant Thompson: Sir, these faithful and worthy gentlemen have carried themselves in this business like the man of understanding that Solomon speaks of.

"I have done, only I would say one word to you, because I hear you are a Protestant: I would only ask you this question, What think you would have become of the Protestant interest, of the Protestants of England, Scotland, and Ireland, if you had had your will; if Charles Stuart had come in? If you had but time (but the Lord knows you have not time) to look over the records of England, to look over the declarations of parliaments since 1640; if you could remember it, Sir, it would tell you what family it was that betrayed the Protestants of France, when Rochel was taken; what family it was that betrayed the Protestants in Germany, and in the Palatinate, when a peace was made with Spain without consent of parliament. What could you think of that family that did tolerate Popery for a match with Spain? What then would that family have done, if it could have gained them England, Scotland, and Ireland.

"And now, Sir, but one word more to you as you are an Englishman: I beseech you consider, what would have become of this nation, if you had had your will; you had brought a new civil war upon England, at the least. I cannot think of a new civil war upon England, but I

think of desolation upon desolation to this poor nation, &c.

"I have but one word to say to Dr. Hewet: And, Sir, when I look upon you as a minister, I must confess I do not know how to speak to you, because it has always been my way to speak to men of your profession, as to ministers; I never spake to them but as a child speaks to his father; such reverence and such regard I bear to their office. But to speak so to a minister as a judge speaks to a traitor, I must confess I know not how to do it. But, Sir, there must be words spoken to you, though I do not speak them; and not only to you as a traitor, but a traitor in the highest degree, not as a traitor (as you are intitled, for endeavouring to levy a new war, and to bring desolation and a war in this nation), but such an one as should rather die a traitor, than own the authority of the nation. But, Sir, I know not how to speak to you, and therefore the record must speak to you; and I myself will not any further.

"I have now a word to speak to you, Mr. Mordant: God hath appeared in justice, and God doth appear in mercy; as the Lord is just to them, so he is exceeding merciful to you: And I may say to you, That God appears to you at this time, as he speaks to sinners in Jesus Christ; for, Sir, he doth clear sinners in Christ Jesus, even when they are guilty, and so God cleareth you: I will not say you are guilty, but ask your own conscience whether you are or no. Sir, bless God as long as you live, and bless my Lord Protector, by whose authority you are cleared. Sir, I speak no more, but I beseech you to speak to God.

"And now let me add this word to these two gentlemen: Sirs, when I have done speaking, I shall never have done praying for you, as long as you are alive; that is the last thing I must say to you. And now let the Judgment of the Court be read."

Thereupon the clerk read the Judgment and Sentence of the Court against sir H. Slingsby, knt. which was as follows:

"That the said sir H. Slingsby, as a false traitor to his said highness the Lord Protector and this Commonwealth, shall be conveyed back again to the Tower of London; and from thence through the middle of the City of London directly shall be drawn unto the gallows of Tyburn, and upon the said gallows there shall be hanged, and being alive, shall be cut down to the ground, and his entrails taken out of his belly, and, he living, be burnt before him; and that his head shall be cut off, and that his body shall be divided into four quarters, &c."

In the next place, the same Judgment and Sentence of the Court was read against Dr. Hewet, being ingrossed in like manner.

This being done, the Judgment of the Court was declared concerning Mr. Mordant, which (in short) was, "That upon consideration of the whole matter in reference to the Charge against him, and his Plea thereunto, they did

adjudge him Not Guilty.\* And so the prisoners were dismissed.

Proclamation being made, the Court adjourned back to the Painted Chamber, where they ordered the Execution of the Sentence upon sir Henry Slingsby and Dr. Hewet to be on Saturday next. And warrants were issued out to the sheriffs of London to see execution done accordingly.

Then the Court adjourned itself until Thursday the 10th instant.

Notwithstanding the former Sentence passed by the High Court, yet his Highness being informed, that Dr. Hewet, prisoner in the Tower of London, who stands attainted of High Treason, before the Commissioners appointed by act of parliament, for levying war against his Highness and the Commonwealth, had Judgment to be hanged, drawn and quartered at Tyburn this instant Saturday; his Highness was graciously pleased, upon humble suit made, to reprieve him until Tuesday the 8th instant, and to order, That the Judgment should be remitted, except the cutting off his head.

The like favour also was extended to sir Henry Slingsby.

Much application was made to save his life by the lord vis-count Fauconbridge his nephew, who had lately married one of the Usurper's daughters; but as sir Henry said at the scaffold, he was inexorable; the truth is, the Tyrant supposed, that his not sparing a person so related to him, would make all the world believe there was a reality of some horrid design, which could not be dispensed with, without extreme danger to the public.

They were both accordingly executed on Tower-Hill the said 8th of June.

Sir H. Slingsby was first brought about eleven of the clock from the Tower to the scaffold on Tower-Hill; whither being come, he fell upon his knees, and for a short space prayed privately. Then standing up, he did in a short speech, and with a very low voice, address himself to Mr. sheriff Robinson, telling him, that what he had to say he would speak to him; which was to this purpose:

'That he had received Sentence to die, upon account of his endeavouring to betray the garrison of Hull: But said, all that he did in that business he was drawn into by others.—That the officers of that garrison did believe he had some greater design in hand, and therefore they would needs pump him to the bottom: But what he spoke to them in private was brought into evidence against him. He likewise said, That he did no more than any person would have done that was so brought on.—That he had made many

'applications, by his friends, for a reprieve, but found his Highness was inexorable.—He did confess, that he did deliver a commission (as it was charged against him): But said, that it was an old commission, and what he meant was well known to himself; but what constructions others had made of it might appear by his present condition.'

He discovered little sense of sorrow, or fear of death; but said: 'He was ready to submit,' or words to like purpose. Then he addressed himself to private prayer again; and kneeling down to the block, he prayed privately for a short space: Then laid his head upon the block, and at the sign given, the executioner severed his head from his body at one blow: and his friends put his body into a coffin, and removed it into a close coach, prepared near the place.

As soon as Sir Henry Slingsby's body was removed as aforesaid, Dr. Hewet was brought forth to the scaffold; whither being come (together with Dr. Wild, Dr. Wernestrey, and another divine), he fell upon his knees and prayed privately for the space of a quarter of an hour; after that he prayed audibly for a good space. After which prayer he addressed himself to the people in the following words:

"I am now become a public spectacle to men and angels, and, I hope God, who is omniscient, is now beholding me with much pity, and great mercy and compassion, and the more, because I am now come to that end that my own Son came into the world for, to bear witness to the truth; he himself said, 'For this end was I born, for this cause came I into the world, that I should bear witness to the truth.' I was brought into the world, the Christian world, for to bear witness to the truth of the gospel, as a common christian; I was brought into the world, the church, as a minister of his blessed word and sacraments (blessed be his name for that great honour and dignity!); and I came into the world to die more immediately for the testimony of Jesus, which God hath now called me to. I came into this world (this Commonwealth) to be a member thereof, to bear witness to the truths of the customs, the laws, the liberties, and privileges thereof: so I am a member of the Commonwealth: and methinks it seems to me a strange thing, that as much as we all plead for liberty, and privileges, and I pleading for the privileges, the laws, the statutes, and the customs of this land, yet I should die by those that should stand for the laws, the statutes, and privileges of the land: And I am here beheld by those that plead for their liberties, and I hope I am pitied, because I here give up myself willingly and freely to be a state-martyr for the public good; and I had rather die many deaths myself, than betray my fellow-freemen to so many inconveniences that they might be like to suffer by being subject to the wills of them that willed me to this death.

"And it is worthy remembrance, that Mr. Solicitor having impeached me of treason to

\* Oldmixon, and after him Hume, says that "just as the sentence was pronounced in his favour, col. Pride, who was resolved to condemn him, came into Court." This circumstance gives to the story dramatic effect; but they cite no authority for it.

the Commissioners of the Court against his Highness, I did often (when brought before those Commissioners) plead for the liberties of the people of England; though I had no knowledge of the law, yet I had instruction from those that were learned in the law, and had several law cases and precedents put into my hand, though not by them, and urged several law-cases; and made my appeal: First, for the judicature that I was to be tried by, Whether it were according to law? Whether it were according to the act? And whether it were according to the words of the said act? I did appeal to have the said act argued by learned lawyers on both sides, and then to be resolved by his Highness's own counsel, which was denied me: [This by the by] I pressing the argument, made a second appeal, that those Judges, if they would give singly their several judgments that it was a just and lawful Court of judicature, I would answer to my Charge. I did make another appeal to those that were his Highness's counsel, and pleaded against me, that if they would deliver it to me under their hands to be according to law, I would then go on to plead and answer to the Charge. What was then said further, my spirits being faint, I shall not say much, but only this, I was taken in three defaults upon formality of the Court. It seems it is a custom in all Courts (which I did not know before), that if they answered not the third time speaking by the clerk, that then they are guilty of three defaults and proceeded against as mute: [I had no such knowledge of the law.] So they found me guilty of those defaults; And when I would have pleaded, and resolved to begin to plead, I was taken from the bar. I did the next day make my petition to the Court in the Painted-Chamber; two petitions were presented, the same in effect; in the former the title was mistaken: Yet because the title was mistaken, and no answer was given, therefore it was that another petition was drawn up to the same effect, with a new title given (as I remember), presented by the Serjeant at Arms; and one writ it over in such haste, lest they should be drawn out of the Painted-Chamber into the Court, that I had not time to read it over, only I subscribed my name; and there was in the front of the petition a word left out, but what the word was I know not; and this was taken so ill, as if I had put an affront and contempt on the Court; and it was thought they would have heard me plead; and then, because of that mistake, they sent word I should have my answer when I came into the Court, and my answer was the sentence of condemnation. And therefore, I pray with all my soul, that God would forgive all those that occasioned the Charge to be drawn against me, to give such unjust things against me; I pray with all my soul, that God would forgive all those that upon so slender and small grounds adjudged me to die, taking advantage of such simple ignorance as I was in. And, I had, at the very beginning of my pleading, engaged their honours

no advantage should be taken against me to my prejudice, that in as much as I understood nothing of the law, and having heard that a man in the nicety of the law might be lost in the severity thereof, merely for speaking a word out of simple ignorance; I made it my prayer to them, that no advantage might be taken against me, to the prejudice of my person; and there was to me a seeming consent, for the President told me, there should be no advantage taken against me; and upon these considerations, I am afraid there was too great uncharitableness: But I pray God forgive them, from the very bottom of my soul, and I desire that even those that shed my blood, may have bowels of the God of mercy shed for them.

"And now having given you the occasion of my coming hither, it is fit I should give you somewhat as concerning myself, as I am a Christian, and as I am a Clergyman: first, as I am a Christian, I thank God I was baptized to the Holy Church, so I was baptized to be a member of the Holy Catholic Church; that is, the Church of England, which I dare say, for purity of doctrine, and orderly discipline, till a sad Reformation had spoiled the face of the Church, and made it a query, whether it was a Church or no: I say, it was more purely divine and apostolical than any other doctrine or Church in the Christian world, whether national, or classical, or congregational. And I must tell you, that as I am a member of this Church, so I am a member of the Holy Catholic Church, and shall give a most just confession of my faith, both negatively and affirmatively. Negatively, I am so a member of the Holy Catholic Church, that I abhor all Sects, Schisms, Sedition and Tyranny in Religion. Affirmatively, so that as I hold communion with, so I love and honour all Christians in the world that love the same Lord Jesus in sincerity, and call on his name, agreeing with those truths that are absolutely necessary, and clearly demonstrated in the word of God, both in the Old and New Testament, though in charity dissenting from some others that are not necessary. And I, as I am thus a Christian, I hope for Salvation, through the merits of Christ Jesus; his blood I rely on, his merits I trust to, for the salvation of my own soul. Though to this faith good works are necessary, not meritorious in us, but only made meritorious by Christ's death; by his all-sufficiency, by his satisfaction, and his righteousness, they become meritorious; but in us they are no other than as defiled rags. And truly, as I am a member of the Church, so I told you I was a member of this community, and so pleaded for the liberties and privileges thereof. I must now answer something I am aspersed withal in the word.

"Here I must come to particulars for a plot, of having a design upon the city of London for the firing of it: I so much tremble at the thought of the thing that should have been done, as they say, for the carrying on of such a design, (if my heart deceive me not) had I known it, I so much abhor the thing, I should have

been the first discoverer of it: nor ever had I a correspondency or meetings with such persons as would have carried on such a design. It is said likewise, I entertained the earl, the marquis of Ormond; to my remembrance I never saw the face of that honourable person in my life. It is said, one Lord's day I did preach at St. Gregory's, and the next Lord's day I was at Brussels, or Bruges, and kissed the King's hand, and brought I cannot tell what orders and instructions from him: this I shall say, for these three years last past together I have not been sixty miles from this City of London, and I think it is somewhat further to either of those places than threescore miles. It is said that I kept correspondence with one Mallory and Bishop: they are persons I have heard of their names, but never saw their faces, and to my knowledge I do not know they know me; nor do I know them at all, but only as I have heard of their names. And whoever else hath suggested such things against me, I know not.

"His Highness was pleased to tell me, I was like a flaming torch in the midst of a sheaf of corn: he meaning, I being a public preacher, was able to set the city on fire by sedition and combustions, and promoting designs. Here truly I do say, and have it from many of those who are judges of the High Court, that upon examination of the business, they have not found me a meddler at all in these affairs. And truly I must needs say therefore, that it was a very uncharitable act in them (whoever they were) that brought such accusations against me, and irritated his Highness against me: I will not say it was malice, it might be zeal; but it was rash zeal which caused me to be sentenced to this place: the God of mercy pardon and forgive them all! And truly as I am a member of the Church, and as a member of the community where on behalf I have been speaking, I cannot but do as our Saviour himself did for his disciples: when he was to be taken from them, he blessed them, and ascended up to heaven. My trust is in the mercy of the Most High, I shall not miscarry; and however my days are shortened by this unexpected doom, and shall be brought untimely to the grave; I cannot go without my prayers for a blessing upon all the people of this land, and cannot but bless them all in the name of God, and beseech God to bless them in all their ways, and his blessing be upon them."

After this he joined in public prayer with Dr. Wild and Dr. Warmestry, he all the while lying flat upon his breast.

Then he addressed himself to private prayer, wherein he continued a certain time. After this he prepared himself for the block, and with a black ribbon bound over his eyes, lying with his breast over the block, he prayed again for a short while; then laid his neck upon the block, and after some short and private ejaculations, the executioner (having notice that he was ready) at one blow severed his head from his body, which was put into a coffin, and conveyed away by his friends.

Fleetwood, in a letter to Henry Cromwell, dated June 8, 1658, says, "This day is the execution of sir Henry Slingsby and Doctor Hewet. Great endeavours have been made to save their lives. There will be some sudden resolutions touching that party." 7 Thurloe, 130.

The author of the Fourth Part of the History of Independency says, "The sentence was executed on the 8th day of June, at Tower-hill, notwithstanding all the means their friends could use of engagements, persuasions and money, and the deep, earnest and continued intreaties, solicitations and supplications of Mrs. Claypole, his (Cromwell's) best beloved daughter, for so inexorable he continued, that like the deaf adder, he 'stopped his ears to the charmer, charm he never so wisely,' at which unheard-of cruelty, and for that Dr. Hewet's lady (as is said) was then with child, Mrs. Claypole took such excessive grief that she suddenly fell sick, the increase of her sickness making her rave in a most lamentable manner, calling out against her father for Hewet's blood, and the like, the violence of which extravagant passions working upon the great weakness of her body, carried her into another world even at the highest thereof." It seems to be generally admitted, that Mrs. Claypole's death made a very afflicting impression on the mind of Cromwell, and possibly it accelerated his own death: The author of the Fourth Part of the History of Independency, seems indeed disposed to believe, that the latter event was marvellously brought about by the Devil, in pursuance of a personal contract made between him and the Protector, on the morning of the Battle of Worcester, Sept. 3rd, 1651, being exactly seven years before the day on which Cromwell died. There is no reason to doubt that the last part of his life was passed under great discomposure, apprehension and anxiety of mind. Maidston, who had been steward of the household to him, in a letter to Mr. Winthrop, Governor of Connecticut, after mentioning the dissolution of the short parliament which met on the 20th of January, 1658, thus expresses himself: "And that was the last that sate during his life, he being compelled to wrestle with the difficulties of his place so well as he could, without parliamentary assistance, and in it met with so great a burthen, as (I doubt not to say) it drank up his spirits, of which his natural constitution yielded a vast stock, and brought him to his grave." 1 Thurloe's State Papers, 766.

Dr. Hewet, we have seen, was executed on June 8, 1658, and Mrs. (or Lady Elizabeth) Claypole died on August 6, and Cromwell on Sept. 3, in the same year. See Whitlocke's Mem.

"It had been observed in England," says Lord Clarendon, "that, though from the dissolution of the last parliament, all things seemed to succeed, at home and abroad, to the Protector's wish, and his power and greatness

to be better established than ever it had been, yet he never had the same serenity of mind he had been used to, after he had refused the crown; but was out of countenance, and chagrin, as if he were conscious of not having been true to himself: and much more apprehensive of danger to his person than he had used to be. Insomuch as he was not easy of access, nor so much seen abroad; and seemed to be in some disorder, when his eyes found any stranger in the room; upon whom they were still fixed. When he intended to go to Hampton Court, which was his principal delight and diversion, it was never known till he was in the coach, which way he would go; and he was still hemmed in by his guards both before and behind; and the coach in which he went was always thronged as full as it could be, with his servants, who were armed; and he seldom returned the same way he went; and rarely lodged two nights together in one chamber, but had many furnished and prepared, to which his own key conveyed him and those he would have with him, when he had a mind to go to bed: which made his fears the more taken notice of and public, because he had never been accustomed to those precautions.

"It is very true, he knew of many combinations

to assassinate him. He seemed to be much afflicted at the death of his friend the earl of Warwick, with whom he had a fast friendship; though neither their humours, nor their natures were like. And the heir of that house, who had married his youngest daughter, died about the same time; so that all his relations to, or confidence in that family was at an end, the other branches of it abhorring his alliance. His domestic delights were lessened every day: he plainly discovered that his son Faulconbridge's heart was set upon an interest destructive to his, and grew to hate him perfectly. But that which chiefly broke his peace, was the death of his daughter Chappole; who had been always his greatest joy, and who, in her sickness, which was of a nature the physicians knew not how to deal with, had several conferences with him, which exceedingly perplexed him. Though nobody was near enough to hear the particulars, yet her often mentioning in the pains she endured, the blood her father had spilt, made people conclude, that she had presented his worst actions to his consideration. And though he never made the least shew of remorse for any of those actions, it is very certain, that either what she said, or her death, affected him wonderfully."

## ADMINISTRATION OF JUSTICE, DURING THE USURPATION OF THE GOVERNMENT.

In the period between the death of Charles the First, and the Restoration of his son, there were other judicial Proceedings, the mention of which, in this Work, might have been desirable; as for instances, of the case of sir John Stowell, mentioned in the third part of Walker's History of Independency, p. 48: sir John Gell's Case, Hist. of Independency, part 3, p. 4, 23, 31, *et seq.* Concerning this Case, Walker mentions a publication under the title of, "Sir John Gell's Case stated," printed about August, 1650. It has been diligently sought for, but without success: Prosecutions of several merchants for not paying customs, mentioned in Walker's History of Independency, part 2, p. 257. (Phynne had shortly after the death of king Charles the First, resisted the tax of 90,000*l.* a month, imposed by the Parliament, towards the maintenance of the forces. See his "Legal Vindication of the Liberties of England.")

Mr. Cony's was a remarkable Case: Ludlow gives the following account of it: "What the Lieutenant-General [Fleetwood] said concerning the disorders of England, was not without ground; things running every day more and more into confusion; the cavaliers being enraged to see the throne usurped; and those who had hazarded all for their country, finding themselves cheated; custom and excise raised without authority of parliament; and

taxes imposed to no other end, than to support the pride and insolence of a single person. Some there were that openly opposed these oppressions. And, amongst others, Mr. George Cony, a merchant, who having refused to pay custom, it was violently taken from him; and he thereupon sued the collector at the common law. But Cromwell, resolving to put a stop to such dangerous precedents, caused the counsel for Mr. Cony, who were, serjeant Maynard, serjeant Twysden, and Mr Wadham Wyndham, to be sent to the Tower; where they had not been above three or four days, when they unworthily petitioned to be set at liberty, acknowledging their fault, and promising to do so no more; chusing rather to sacrifice the cause of their client, wherein that of their country was also eminently concerned, than to endure a little restraint, with the loss of the fees for a few days. By this means, when the cause came to the next hearing, Mr. Cony was necessitated to plead for himself; which he did in as short a manner as he could; referring it wholly to the judge, whether that tax, being not authorised by parliament, ought to be paid by the law of the land; and declaring that he would abide by his judgment therein. Serjeant Rolls, then Chief Justice of the Upper Bench, though a conscientious man, and a lover of civil liberty, yet not daring to determine it for him, said, that something must be allowed to cases

of necessity. To which Mr. Cony replied, That it was never wont to be a good plea in law, for a man to make necessities, and then to plead them. But the judge, wanting courage, would not give judgment against the usurper; and being too much an honest man to give it for him, he took time till the next ensuing term to consider what rule he should give in the case. In the mean time, upon consideration that his continuance in that station was like to ensnare him more and more, he desired, by a letter to Cromwell, to have his *quietus*; and Serjeant Glyn was appointed to succeed him in his employment, as a fitter instrument to carry on the designs on foot. The new Chief Justice, before he came to sit on the bench, took care to have this business accommodated with Cony; who lost his reputation, by withdrawing himself from a cause, wherein the public was so much concerned. Sir Peter Wentworth, a member of the long parliament, caused also a collector in the country to be arrested, and prosecuted at his suit, though he could hardly procure an attorney to appear, or counsel to plead for him. Cromwell, having received notice of this prosecution, sent a messenger, with an order to bring him before the council; where being examined concerning the ground of his proceeding, he told them, that he was moved to it by his constant principle, 'That, by the law of England, no man ought to be levied upon the people without their consent in parliament.' Cromwell then asked him, Whether he would withdraw his action or no? To which he replied, 'If you will command me, I must submit;' and thereupon, Cromwell having commanded it, he withdrew his action. Some time after, taking the liberty, in a discourse with him, to reprove him for that retraction, he made me this answer, That no man could have done more than he did, to the time of his appearing at the council; and that if he had then failed in any thing, it must be attributed to his age of three-score and three years; when, said he, the blood does not run with the same vigour as in younger men."

Lord Clarendon relates the matter thus: "One time when he had laid some very extraordinary taxes upon the city, one Cony, an eminent fanatic, and one who had heretofore served him very notably, positively refused to pay his part; and loudly dissuaded others from submitting to it, 'as an imposition notorious-ly against the law, and the property of the subject, which all honest men were bound to defend.' Cromwell sent for him, and cajoled him with the memory of 'the old kindness' and friendship, that had been between them: 'and that of all men he did not expect this opposition from him, in a matter that was so necessary for the good of the Commonwealth.' It had been always his fortune to meet with the most rude, and obstinate behaviour from those who had formerly been absolutely governed by him; and they commonly put him in mind, of some expressions and sayings of

his own, in case of the like nature; so this man remembered him, how great an enemy he had expressed himself to such grievances, and had declared, 'that all, who submitted to them, and paid illegal taxes, were more to blame, and greater enemies to their country, than they who had imposed them; and that the tyranny of princes could never be grievous, but by the tameness and stupidity of the people.' When Cromwell saw that he could not convert him, he told him, 'that he had a will as stubborn as his, and he would try which of them two should be master.' Thereupon, with some expressions of reproach and contempt, he committed the man to prison; whose courage was nothing abated by it; but as soon as the term came, he brought his Habeas Corpus in the King's Bench, which they then called the Upper Bench. Maynard, who was of counsel for the prisoner, demanded his liberty with great confidence, both upon the illegality of the commitment, and the illegality of the imposition, as being laid without any lawful authority. The judges could not maintain or defend either, and enough declared what their sentence would be; and therefore the Protector's attorney required a further day, to answer what had been urged. Before that day, Maynard was committed to the Tower, for presuming to question or make doubt of his authority; and the judges were sent for, and severely reprehended for suffering that licence; when they with all humility, mentioned the law and Magna Charta, Cromwell told them, with words of contempt, and derision, 'their Magna F\*\*\*\* should not controul his actions; which he knew were for the safety of the Commonwealth.' He asked them 'who made them judges? whether they had any authority to sit there, but what he gave them? and if his authority were at an end, they knew well enough, what would become of themselves; and therefore advised them to be more tender of that which could only preserve them;' and so dismissed them with caution, 'that they should not suffer the lawyers to prate what it would not become them to hear.'"

Thurloe's State Papers abound in the Examinations of different persons, respecting Plots against Cromwell, and his authority.

Harris notices, that "Cromwell packed Juries on occasion, and displaced judges for refusing to follow his directions. Here are my proofs. 'When judge Hale was on a circuit, he understood that the Protector had ordered a jury to be returned for a trial in which he was more than ordinarily concerned; upon this information, he examined the sheriff about it, who knew nothing of it; for he said he referred all such things to the under-sheriff, and having next asked the under-sheriff concerning it, he found the jury had been returned by order from Cromwell; upon which he shewed the statute that all juries ought to be returned by the sheriff or his law-

ful officer : and this not being done according to law, he dismissed the jury and would not try the cause : upon which the Protector was highly displeased with him, and at his return from the circuit, he told him in anger, he was not fit to be a judge, to which all the answer he made was, 'That it was very true.'

"That this may be true is rendered very probable by letters to Thurloe, part of which I will here transcribe. The first is from Mr. Dove, high-sheriff of Wilts, dated Sarum, March 29, 1655, relating to the intended trials for rebellion against the Protector. 'I understand a Commission of Oyer and Terminer is issued out for trial of the rebels in the west ; and there is a mistrust of my under-sheriff. Sir, I resolve that no one man shall be returned in the one or other juries, but such as may be confided in, and of the honest well affected party to his Highness, and the present government. If there be but enough to be found of them through the whole county, which I hope there is, it is and will be my greatest care for that business, to see it punctually done, and not trust my under-sheriff therewith.' I suppose he was as good as his word, for both the juries I find highly commended by the solicitor, and other of his Highness's agents, in their accounts of the trials of the unhappy sufferers.—Colonel Lilburne in a letter to the secretary, dated York, April 10, 1655, has the following passage, on a like subject. 'As for jurors, happily the law may give liberty to choose them without the liberties of this city, both fact and act rising in the county, and then we shall do pretty well : but, if otherwise, there shall be no diligence or care wanting to pick up such as are right.' Practices of this nature could not but be dangerous to the subject. What is said in the text concerning Oliver's displacing of judges, is founded on the authority of Whitelocke. 'Baron Thorpe, and judge Newdigate, says he, were put out of their places, for not observing the Protector's pleasure in all his commands.' I know not, whether I ought to insert under this head the displacing Whitelocke and Widdrington, commissioners of the great seal, for refusing to proceed according to an ordinance made 'for the better regulating and limiting the jurisdiction of the High Court of Chancery.' Possibly the Protector, however he might be mistaken, really thought his regulation for the public good, and therefore could not be blamed for dismissing such as were not to be prevailed on to concur with him therein. These gentlemen however, as they were deemed by the Protector men of honour and abilities, were employed in other departments, and enjoyed his countenance and encouragement. His speech on the taking away the seal from these commissioners, was remarkable. 'The Protector in the council chamber, very gravely told us, says Whitelocke, that he was sorry some of us could not satisfy our own consciences, to execute the ordinance concerning the Chancery, which they were informed had

'much good in it to the public, but he confessed, that every one was to satisfy himself in matters to be performed by him, and that he had not the worse opinion of any man for refusing to do that whereof he was doubtful ; but in this particular the affairs of the Commonwealth did require a conformity of the officers thereof, and their obedience to authority, and (being some of us refused to execute this act, as was enjoined) they were compelled thereby to put this charge of the custody of the great seal into the hands of some others, who might be satisfied that it was their duty to perform this command, and to put the ordinance in execution !' I have said the Protector possibly, was not to be blamed for his conduct in this affair : the reader, however, must judge of this.

"He committed men illegally to prison, and permitted them not the benefit of the laws.—The author of "The World's Mistake in Oliver Cromwell," will supply me with sufficient proofs of this. 'To prove,' says he, 'that Oliver's time was full of oppression and injustice, I shall but instance, in a few of many particulars, and begin with John Lilburne, not that I think him in any kind one that deserved favour or respect, but that equal justice is due to the worst, so well as to the best men, and that he comes first in order of time.'

"1. John, in 1649, was, by order of the then parliament, tried for his life, with an intent, I believe, of taking him away, but the jury not finding him guilty, he was immediately, according to law, generously set at liberty by those that had quarrelled enough against him. This example in the parliament, of keeping to the laws in the case of one, who was a professed implacable enemy to them, ought to have been copied by Cromwell ; but, in the contrary, to shew that there was a difference betwixt his and his predecessors (the long parliament's) principles, when the law had again, upon a second trial (occasioned by Oliver) cleared Lilburne, the parliament's submitting to the law was no example to him ; for, contrary to law, he kept him in prison, until he was so far spent in a consumption, that he only turned him out to die.'

"2. Mr. Cony's Case is so notorious that it needs but little more than naming : he was a prisoner at Cromwell's suit, and being brought to the King's Bench bar by a Habeas Corpus, had his counsel taken from the bar, and sent to the Tower for no other reason, than the pleading of their client's cause ; an act of violence, that, I believe, the whole story of England doth not parallel.' This was on the 18th of May, 1655. The gentlemen thus committed, were Maynard, Twysden and Windham, men of great eminence in their profession, who could find no release from their imprisonment, but by humbly petitioning the Protector. But to go on.

"3dly. Sir Henry Vane, above another person, was the author of Oliver's advance-



ment, and did so long and cordially espouse his interest, that he prejudiced himself (in the opinion of some) by it, yet so ungrateful was this monster of ingratitude, that he studied to destroy him, both in life and estate, because he could not adhere to him in his perjury and falseness. The occasion he took was this: he appointing a day of humiliation, and seeking of God for him, invited all God's people in his declaration, to offer him their advice in the weighty affairs then upon his shoulders: Sir Henry taking a rise from hence offered his advice by a treatise called the Healing Question; but Cromwell, angry at being taken at his word, seized, imprisoned, and endeavoured to proceed further against him, for doing only what he invited him to do.

“4thly. In Richard's assembly, certain prisoners in the Tower, under the then lieutenant, and some sent thence to Jersey, and other places beyond the sea, complained of false imprisonment. Their guoler was sent for, and being required to shew by what authority he kept these persons in hold, produced a paper all under Oliver's own hand, as followeth. ‘Sir, I pray you seize such and such persons, and all others whom you shall judge dangerous men; do it quickly, and you shall have a warrant after it is done.’ The nature of this warrant was by Richard's assembly debated, and having first Richard's own counsel's opinions in the case, as sergeant Maynard, &c. they voted the commitments of the complainants to be illegal, unjust and tyrannical; and that, first, because the warrant by which they were committed, was under the hand of the then (as they called him) Chief Magistrate, who, by law, ought not to commit any by his own warrant. Secondly, because no cause was shewn in the warrant; and thirdly (in the case of those sent out of the reach of a Habeas Corpus, which in law is a banishment), because no Englishman ought to be banished by any less authority than an act of parliament. And, therefore, for these reasons they voted farther, that the prisoners should be set at liberty without paying any fees or charges. But the turning out and punishing the lieutenant by the assembly (for obeying so unjust a warrant) was prevented by their sudden dissolution.’ Most of the acts here recited, are well known to those versed in this part of the English history, and may be established on the best authorities. But on consulting the Journals of the parliament, here referred to, I find a mistake relating to the commitments by Oliver. On Saturday the 26th of Feb. 1653, says the Journals, Mr. Terill ‘reported from the grand committee of the house for grievances and courts of justice, the state of the case concerning Mr. John Portmans, a prisoner in the Tower, as it appeared to the committee; viz. That the lieutenant of the Tower, the 3rd of Feb. 1657, received a letter from the late Lord Protector, early in the morning, directing him to apprehend Mr. John Portmans (amongst others)

forthwith: that the same day, in the afternoon, a warrant was sent to the lieutenant of the Tower, under the hand of the late Lord Protector, to require and authorise him to apprehend and imprison Mr. Portmans: that the same night, or shortly after, upon that warrant, Mr. Portmans was taken by a lieutenant and about six soldiers, under the command, and by the order and direction, of the lieutenant of the Tower; and hath ever since remained a prisoner there, without any trial, or other proceedings had against him.’—On the 26th of March following, the warrant for the commitment and detaining major-general Overton in the isle of Jersey was read; and was signed Oliver P.; and directed to the governor of the isle of Jersey or his deputy; and was in these words; viz. ‘These are to will and require you forthwith to receive into your charge the bodies of Robert Overton, major Norwood, and sir Thomas Armstrong, and——Weston, esq.; and them detain, under secure imprisonment, in the castle of Jersey, until you shall receive further orders from us: and, for so doing, this shall be your warrant. Given at Whitehall, the 8th of January, 1657.’ These commitments were voted by the house illegal and unjust, and the gentlemen were ordered to be discharged from their imprisonment.’ It appears also from the Journal of the same day, that the committee found, ‘that divers commoners of England had, by illegal warrants, been committed to prison into the islands of Jersey, and other the islands belonging to this Commonwealth, out of the reach of the Habeas Corpus. Thus we see that Cromwell, who had opposed and punished Charles for his illegal acts, became an imitator of him, and, in some of these instances, went even beyond him: for I question whether all Charles's reign can produce so daring a violation of the right of the subject, as his imprisoning Maynard and his brethren, for pleading in behalf of Cony their client: nor is there a greater, than the imprisoning and banishing men on his own warrant, and depriving them of the benefit of the laws made for their relief. Vain, indeed, might the unhappy sufferers have said, were the efforts made against the king, when the effect of them was still slavery and oppression!

“The high courts of justice.—The erection of a high court of justice for the trial of Charles gave rise to many others. When the nature of the supposed crime was such as fell not under the cognizance of the common law; when the persons accused, were of a quality which might incline a jury to treat them with compassion and regard; or when they had been engaged in actions popular, though illegal, it was then thought proper by those in power to erect high courts of justice, in order that offenders might not escape punishment. These courts were constituted of commissioners named by the government, who performed the several offices of judges and juries, and determined concerning the law and the fact. The Attorney-General

generally managed the evidence against the prisoners, and few escaped who were cited before these tribunals. The duke of Hamilton, and the lords Holland and Capel, Christopher Love and Mr. Gibbons, with some others, were sentenced to die by courts thus constituted, who, probably, before another kind of judicature, would have met with a milder treatment, though, as the laws then were, they could not but be deemed offenders. When Cromwell came to the government, he made use of the same methods of trial on several occasions: and in the year 1656, the parliament passed 'An Act for the security of his highness the Lord Protector's person, and continuation of the nation in peace and safety.' In the preamble it is said, 'Forasmuch as the prosperity and safety of this nation—very much dependeth, under God, upon the security and preservation of the person of his Highness; and, for that it hath manifestly appeared, that divers wicked plots and means have been of late devised and laid, to the great endangering his Highness's person, and the embroiling this Commonwealth in new and intestine wars and seditions: therefore be it enacted, that if any person shall attempt, compass or imagine the death of the Lord Protector, and declare it by open deed; or shall advisedly and maliciously proclaim, declare, publish or promote Charles Stuart, or any other person claiming from the late King; or shall aid and assist, hold intelligence with, or contribute money towards the assistance of the said Charles Stuart, his brothers or mother, &c. then all and every the offences abovementioned shall be adjudged to be High Treason: and that in all such cases, and upon all such occasions, the Lord Chancellor, the Lord Keeper, or Lords Commissioners of the Great Seal of England for the time being, are authorised and required from time to time, by warrant from his Highness, to issue out one or more Commission or Commissions, under the Great Seal of England, to—&c.—or any seventeen or more of them: which said Commissioners shall have authority to hear, examine and determine all matters, crimes and offences aforesaid; and also to hear and determine all misprisions of the treasons in this act mentioned, and to take order for charging the offender or offenders, with all or any the crimes aforesaid, and for the receiving their personal answer thereunto; and for examination of witnesses upon oath, and thereupon, or upon the confession of the party, or, in default of such answer, to proceed to conviction and final sentence, as in cases of High Treason, and Misprision of Treason, according to justice and the merits of the cause.'—Commissioners were also appointed for the same purpose in Scotland and Ireland. This act was to continue in force unto the end of the last session of the next parliament, and no longer. By this last clause it seems sufficiently evident that the framers of this law, were sensible of its severity and ill consequences. However, this

seemed to give a sanction to it. But what is unreasonable never satisfies. It was urged that trials by juries were the birthrights of Englishmen; that all trials for Treason were to be had and used only according to the due order and course of the common laws of the realm, and not otherwise, upon inquest, and presentment by the oaths of twelve good and lawful men, upon good and probable evidence and witness; and that if any thing be done to the contrary, it shall be void in law, redressed and holden for error and nought: and if any statute be made to the contrary, that shall be holden for none. That to proceed against any without legal indictment, presentment and trial, in the way of the high courts of justice, was very unequitable; the Commissioners themselves being both grand and petty jury, and judges likewise, if not parties interested, to whom no peremptory or legal challenges could be made; and finally, that such proceedings were contrary to Magna Charta; the Petition of Right; the Declarations of the Parliament; and to an article in the Instrument of Government which was sworn to by the Protector himself. How good soever these pleas might have been, they were not suffered to be of use to the prisoners. Judges are generally well enough satisfied of the authority by which they act, and will not have it questioned. To demur to the jurisdiction, or refuse to answer, is equivalent to the clearest proof of guilt, and judgment is accordingly given. However, the Protector had his end by this method of proceeding. 'He thought it more effectual,' says Whitlocke, 'than the ordinary course of trials at the common law, and would the more terrify the offenders: and thereby it did; for, on the erection of the last high court of justice, according to Clarendon, 'it put all those who knew how liable they themselves were, under a terrible consternation.' Whitlocke would not sit when nominated as a Commissioner, it being, as he says, against his judgment."

Mr. Burke seems to have had a very lively sense of Cromwell's merit in providing for the able, and upright administration of justice, in cases in which his own interests were not involved. In his "Letter to a Member of the National Assembly," vol. 6, of his Works, pp. 14, 15, ed. 1808, he thus contrasts Cromwell's conduct in this respect with that of the French Revolutionists. "Your rulers brought forth a set of men steaming from the sweat and drudgery, and all black with the smook and soot of the forge of confiscation and robbery, 'ardentis massæ fuliginis lippos,' a set of men brought forth from the trade of hammering arms of proof, offensive and defensive, in aid of the enterprise, and for the subsequent protection of housebreakers, murderers, traitors, and malefactors; men who had their minds reasoned with theories perfectly conformable to their practice, and who had always laughed at possession and prescription, and defied all the fundamental maxims of jurisprudence. To the hor-

ror and stupefaction of all the honest part of this nation, and indeed of all nations, who are spectators, we have seen on the credit of those very practices and principles, and to carry them further into effect, those very men placed on the sacred seat of justice, in the capital city of your late kingdom. Cromwell, when he attempted to legalise his power, and to settle his conquered country in a state of order, did not look for dispensers of justice, in the instruments of his usurpation. Quite the contrary. He sought out with great solicitude and selection, and ever from the party most opposite to his designs, men of right and decorum of character, men unstained with the violence of the times, and with hands not fouled with confiscation and sacrilege; for he chose an Hale\* for his Chief Justice, though he absolutely refused to take his civic oaths, or to make any acknowledgment whatsoever of the legality of his government. Cromwell told this great lawyer, that since he did not approve his title, all he required of him was, to administer in a manner agreeable to his pure sentiments, and unspotted character, that justice without which human society cannot subsist, that it was not his particular government, but civil order itself, which as a judge he wished to support. Cromwell knew how to separate the institutions expedient to his usurpation, from the administration of the public justice of his country. For Cromwell was a man in whom ambition had not wholly suppressed, but only suspended the sentiments of religion, and the love, as far as it could consist with his designs, of fair and honourable reputation. Accordingly we are indebted to this act of his, for the preservation of our laws, which some senseless asserters of the rights of men, were then on the point of erasing as relics of feudality, and barbarism. Besides he gave, in the appointment of that man, to that age, and to all posterity, the most brilliant example of sincere and fervent piety, exact justice, and profound jurisprudence. But these are not the things in which your philosophic usurpers chuse to follow Cromwell." In another place ("Remarks on the Policy of the Allies," 1793, vol. 7, same edition, p. 196) he says, "The government of Cromwell was to be sure somewhat rigid, but for a new power no savage tyranny. The country was never as well in his hands, as in those of Charles the second, and in some points much better. The laws in general had their course, and were admirably administered."

Harris says; "He filled the benches with able and honest judges, &c.—The historians of all parties have, by the notoriety of the fact, been forced to pay this tribute of praise to Cromwell. I could mention many; but will

\* The story is that Cromwell applied in person to Hale, and by long and warm persuasion prevailed on him to accept the office of judge. Hale was not made Chief Justice till the year 1671. Under Cromwell he was a Judge of C. B.

VOL. V.

content myself with the authorities of Clarendon and Coke, who, though of different principles, were equally faithful to the government and memory of the Protector. The former affirms, 'That in matters which did not concern the life of his jurisdiction, he seemed to have great reverence for the law, rarely interposing between party and party.' The latter assures us, 'That Westminster-Hall was never replenished with more learned and upright judges than by him; nor was justice either in law or equity, in civil cases, more equally distributed, where he was not a party.' The names of his judges, possibly, may not be unacceptable to some readers. They were as follows: the Lord Chief Justices Glyn and St. John; the Justices Warburton, Newdigate, Atkins, Hale, Windham; the Barons Nicholas, Parker, Hill. The Commissioners of the Great Seal, at first, were the famous Mr. Whitelocke, Widrington and Lenthall; afterwards Fiennes, Lisle and Lenthall. The gentlemen of the long robe still mention the names of some of these persons with great honour. How solicitous Cromwell was to appoint the most able and upright persons to fill the important posts of the law, will best appear by the following quotations. 'Cromwell seeing him (Mr. Hale) possessed of so much practice, and he being one of the eminentest men of the law, who was not at all afraid of doing his duty in those critical times, resolved to take him off from it, and raise him to the bench. Mr. Hale saw well enough the snare laid for him, and though he did not much consider the prejudice it would be to himself, to exchange the easy and safer profits he had by his practice for a judge's place in the Common Pleas, which he was required to accept of, yet he did deliberate more on the lawfulness of taking a commission from usurpers; but having considered well of this, he came to be of opinion, that it being absolutely necessary to have justice and property kept up at all times, it was no sin to take a commission from usurpers, if he made no declaration of his acknowledging their authority, which he never did. He was much urged to accept of it by some eminent men of his own profession, who were of the King's party, as sir Orlando Bridgman, and sir Geoffrey Palmer; and was also satisfied concerning the lawfulness of it, by the resolution of some famous divines, in particular Dr. Sheldon and Dr. Henchman, who were afterwards promoted to the sees of Canterbury and London. To these were added the importunities of all his friends, who thought, that in a time of so much danger and oppression, it might be no small security to the nation, to have a man of his integrity and abilities on the bench; and the usurpers themselves held him in that estimation, that they were glad to have him give a countenance to their courts, and, by promoting one that was known to have different principles from them, affected the reputation of honouring and trusting men of eminent virtues, of what pri-

3 P

'suasion soever they might be, in relation to 'public matters.' Another work speaks more plainly on this subject. 'He [Cromwell] studied to seek out able and honest men, and to employ them. And so having heard that my father had a very great reputation in Scotland, for piety and integrity, though he knew him to be a Royalist, he sent to him, desiring him to accept of a judge's place, and to do justice in his own country, hoping only that he would not act against his government, but he would not press him to subscribe or swear to it.' Burnet.—How great! how generous! it was hardly possible, but a man of such a disposition must be well served."

It is observable, that Waller in his spirited "Panegyric to my Lord Protector, of the present Greatness and Joint Interest of his Highness and this Nation," does not notice this merit in Cromwell.

Mr. Barrington, in his *Observations on Stat. 9 Hen. 4.*, tells us, "It hath been often said, that the worse title the better king."

Ludlow, in relating the events which preceded the Restoration, tells us, "So low were the affairs of the parliament, and their authority so little regarded, even in Westminster Hall, that sir Robert Pye, who had been committed to the Tower by their order, suing for his Habeas Corpus at the Upper Bench, and Judge Newdigate demanding of the counsel for the Commonwealth what they had to say why it should not be granted; the counsel answered, they had nothing to say against it. Whereupon the Judge, though no enemy to monarchy, yet ashamed to see them so unfaithful to their trust, replied, That if they had nothing to say, he had: for that sir Robert Pye being committed by an Order of the parliament, an inferior court could not discharge him."

## 205. The Trials of TWENTY-NINE REGICIDES, at the Old Bailey, for High Treason, which began the 9th Day of October, A. D. 1660: 12 CHARLES II.

### INTRODUCTION.

OF the intrigues at home and abroad which preceded and accompanied the Restoration, many particulars are related by Clarendon and Ludlow. The following six were Instruments dispatched by Charles the Second to England before his arrival. They contain the assurances of mercy alluded to in the Trials of the Regicides, and in that of sir Henry Vane.

#### *The LETTER of the KING to the GENERAL and the ARMY.*

To Our Trusty and Well-beloved General Monk, to be by him communicated to the President, and Council of State, and to the Officers of the Armies under his Command.

Charles R.;—Trusty, and well-beloved, We greet you well: It cannot be believed, but that we have been, are, and ever must be, as solicitous as we can, by all endeavours to improve the affections of our good subjects at home, and to procure the assistance of our friends and allies abroad, for the recovery of that right, which, by the laws of God and man, is unquestionable, and of which we have been so long dispossessed by such force, and with those circumstances, as we do not desire to aggravate by any sharp expressions; but rather wish, that the memory of what is past, may be buried to the world. That we have more endeavoured to prepare, and to improve the affections of our subjects at home for our restoration, than to procure assistance from abroad to invade either of our kingdoms, is as manifest to the world. And we cannot give a better evidence, that we are still of the same mind, than

in this conjuncture; when common reason must satisfy all men, that we cannot be without assistance from abroad, we choose rather to send to you, who have it in your power to prevent that ruin and desolation which a war would bring upon the nation, and to make the whole kingdom owe the peace, happiness, security, and glory it shall enjoy, to your virtue; and to acknowledge that your armies have complied with their obligations, for which they were first raised, for the preservation of the Protestant Religion, the honour and dignity of the king, the privileges of parliament, the liberty and property of the subject, and the fundamental laws of the land; and that you have vindicated that trust, which others most perfidiously abused and betrayed. How much we desire, and resolve to contribute to those good ends, will appear to you by our inclosed Declaration; which we desire you to cause to be published for the information and satisfaction of all good subjects, who do not desire a farther effusion of precious Christian blood, but to have their peace and security founded upon that which can only support it, an unity of affections amongst ourselves, an equal administration of justice to men, restoring parliaments to a full capacity of providing for all that is amiss, and the laws of the land to their due veneration.

You have been yourselves witnesses of so many revolutions, and have had so much experience, how far any power and authority that is only assumed by passion and appetite, and not supported by justice, is from providing for the happiness and peace of the people, or from receiving any obedience from them (without which no government can provide for them) that you may very reasonably believe, that God hath not been so well pleased with the at-

tempts that have been made, since he hath usually encreased the confusion, by giving all the success that hath been desired, and brought that to pass without effect, which the designers have proposed as the best means to settle and compose the nation: and therefore we cannot but hope and believe, that you will concur with us in the remedy we have applied; which, to human understanding, is only proper for the ills we all grow under; and that you will make yourselves the blessed instruments to bring this blessing of peace and reconciliation upon king and people, it being the usual method in which Divine Providence delighteth itself, to use and sanctify those very means, which ill men design for the satisfaction of private and particular ends and ambition, and other wicked purposes, to wholesome and public ends, and to establish that good which is most contrary to the designers; which is the greatest manifestation of God's peculiar kindness to a nation that can be given in this world. How far we resolve to preserve your interests, and reward your services, we refer to our Declaration; and we hope God will inspire you to perform your duty to us, and to your native country; whose happiness cannot be separated from each other.

We have intrusted our well-beloved servant sir John Greenville, one of the gentlemen of our Bed Chamber, to deliver this unto you, and to give us an account of your reception of it, and to desire you, in our name, that it may be published. And so we bid you farewell.—Given at our Court at Breda, this 4-14th of April, 1660, in the twelfth year of our reign.

*The KING'S LETTER to the HOUSE OF COMMONS.*

To Our Trusty, and Well-beloved, the Speaker of the House of Commons.

Charles R.—Trusty and well-beloved, we greet you well: In these great and insupportable afflictions and calamities, under which the poor nation hath been so long exercised, and by which it is so near exhausted, We cannot think of a more natural and proper remedy, than to resort to those for counsel and advice, who have seen and observed the first beginning of our miseries, the progress from bad to worse, and the mistakes and misunderstandings, which have been produced, and contributed to inconveniencies which were not intended; and after so many revolutions, and the observation of what hath attended them, are now trusted by our good subjects to repair the breaches which are made, and to provide proper remedies for those evils, and for the lasting peace, happiness, and security of the kingdom.

We do assure you upon our royal word, that none of our predecessors have had a greater esteem of parliaments, than we have in our judgment, as well as from our obligation; we do believe them to be so vital a part of the constitution of the kingdom, and so necessary for the government of it, that we well know neither prince nor people can be in any tolerable degree happy without them; and therefore you

may be confident, that we shall always look upon their counsels, as the best we can receive; and shall be as tender of their privileges, and as careful to preserve and protect them, as of that which is most near to ourself, and most necessary for our own preservation.

And as this is our opinion of parliaments, that their authority is most necessary for the government of the kingdom; so we are most confident, that you believe, and find, that the preservation of the king's authority is as necessary for the preservation of parliaments; and that it is not the name, but the right constitution of them, which can prepare and apply proper remedies for those evils which are grievous to the people, and which can thereby establish their peace and security. And therefore we have not the least doubt, but that you will be as tender in, and as jealous of, any thing that may infringe our honour, or impair our authority, as of your own liberty and property; which is best preserved by preserving the other.

How far we have trusted you in this great affair, and how much it is in your power to restore the nation to all that it hath lost, and to redeem it from any infamy it hath undergone, and to make the king and people as happy as they ought to be; you will find by our inclosed Declaration; a copy of which we have likewise sent to the house of peers: and you will easily believe, that we would not voluntarily, and of ourself, have reposed so great a trust in you, but upon an entire confidence that you will not abuse it, and that you will proceed in such a manner, and with such due consideration of us who have trusted you, that we shall not be ashamed of declining other assistance (which we have assurance of) and repairing to you for more natural and proper remedies for the evils we would be freed from; nor sorry, that we have bound up our own interests so entirely with that of our subjects, as that we refer it to the same persons to take care of us, who are trusted to provide for them. We look upon you as wise and dispassionate men, and good patriots, who will raise up those banks and fences which have been cast down, and who will most reasonably hope, that the same prosperity will again spring from those roots, from which it hath heretofore and always grown; nor can we apprehend that you will propose any thing to us, or expect any thing from us, but what we are as ready to give, as you to receive.

If you desire the advancement and propagation of the Protestant Religion, we have, by our constant profession, and practice of it, given sufficient testimony to the world, that neither the unkindness of those of the same faith towards us, nor the civilities and obligations from those of a contrary profession (of both which we have had an abundant evidence) could in the least degree startle us, or make us swerve from it; and nothing can be proposed to manifest our zeal and affection for it, to which we will not readily consent. And we hope, in due time, ourself to propose some

what to you for the propagation of it, that will satisfy the world, that we have always made it both our care and our study, and have enough observed what is most like to bring disadvantage to it.

If you desire security for those who, in these calamitous times, either wilfully or weakly have transgressed those bounds which were prescribed, and have invaded each others rights, we have left to you to provide for their security and indemnity, and in such a way, as you shall think just and reasonable; and by a just computation of what men have done, and suffered, as near as is possible, to take care that all men be satisfied; which is the surest way to suppress, and extirpate all such uncharitableness and animosity, as might hereafter shake and threaten that peace, which for the present might seem established. If there be a crying sin, for which the nation may be involved in the infamy that attends it, we cannot doubt but that you will be as solicitous to redeem it, and vindicate the nation from that guilt and infamy, as we can be.

If you desire that reverence and obedience may be paid to the fundamental laws of the land, and that justice may be equally and impartially administered to all men, it is that which we desire to be sworn to ourselves, and that all persons in power and authority should be so too.

In a word, there is nothing that you can propose that may make the kingdom happy, which we will not contend with you to compass; and upon this confidence and assurance, we have thought fit to send you this Declaration, that you may as much as is possible, at this distance, see our heart; which, when God shall bring us nearer together (as we hope he will do shortly) will appear to you very agreeable to what we have professed; and we hope, that we have made that right Christian use of our affliction, and that the observation and experience we have had in other countries, have been such, as that we, and we hope, all our subjects, shall be the better for what we have seen and suffered.

We shall add no more, but our prayers to Almighty God, that he will so bless your counsels, and direct your endeavours, that his glory and worship may be provided for; and the peace, honour, and happiness of the nation, may be established upon those foundations which can best support it. And so we bid you farewell.—Given at our Court at Breda, this 4-14th day of April 1660, in the twelfth year of our reign.

#### THE KING'S DECLARATION.

C. R. Charles, by the grace of God, king of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all our loving subjects of what degree or quality soever, greeting. If the general distraction, and confusion, which is spread over the whole kingdom, doth not awaken all men to a desire, and longing, that those wounds which have so

many years together been kept bleeding, may be bound up, all we can say will be to no purpose. However, after this long silence, we have thought it our duty to declare, how much we desire to contribute thereunto: and that, as we can never give over the hope, in good time, to obtain the possession of that right, which God and nature hath made our due; so we do make it our daily suit to the Divine Providence, that he will, in compassion to us, and our subjects, after so long misery and sufferings, remit, and put us into a quiet, and peaceable possession of that our right, with as little blood and damage to our people as is possible; nor do we desire more to enjoy what is ours, than that all our subjects may enjoy what by law is theirs, by a full and entire administration of justice throughout the land, and by extending our mercy where it is wanted and deserved.

And to the end that fear of punishment may not engage any conscious to themselves of what is past, to a perseverance in guilt for the future, by opposing the quiet and happiness of their country, in the Restoration both of king, and peers, and people, to their just, ancient, and fundamental rights; we do by these presents declare, that we do grant a free and general Pardon, which we are ready, upon demand, to pass under our great seal of England, to all our subjects of what degree or quality soever, who within forty days after the publishing hereof, shall lay hold upon this our grace and favour, and shall by any public act declare their doing so, and that they return to the loyalty and obedience of good subjects; excepting only such persons as shall hereafter be excepted by parliament. Those only excepted, let all our subjects, how faulty soever, rely upon the word of a king, solemnly given by this present Declaration, that no crime whatsoever committed against us, or our royal father, before the publication of this, shall ever use in judgment, or be brought in question, against any of them, to the least indamagement of them, either in their lives, liberties, or estates, or (as far forth as lies in our power) so much as to the prejudice of their reputations, by any reproach, or terms of distinction from the rest of our best subjects; we desiring, and ordaining, that henceforward all notes of discord, separation, and difference of parties, be utterly abolished among all our subjects; whom we invite and conjure to a perfect union among themselves, under our protection, for the resettlement of our just rights, and theirs, in a free parliament; by which, upon the word of a king, we will be advised.

And because the passion and uncharitableness of the times, have produced several opinions in religion, by which men are engaged in parties and animosities against each other; which, when they shall hereafter unite in a freedom of conversation, will be composed, or better understood; we do declare a Liberty to Tender Consciences; and that no man shall be disquieted, or called in question, for differences

of opinion in matters of religion which do not disturb the peace of the kingdom; and that we shall be ready to consent to such an act of parliament, as, upon mature deliberation, shall be offered to us, for the full granting that indulgence.

And because in the continued distractions of so many years, and so many and great revolutions, many grants and purchases of estates have been made to and by many officers, soldiers, and others, who are now possessed of the same, and who may be liable to actions at law, upon several titles, we are likewise willing that all such differences and all things relating to such grants, sales, and purchases, shall be determined in parliament, which can best provide for the just satisfaction of all men who are concerned.

And we do further declare, that we will be ready to consent to any act or acts of parliament to the purposes aforesaid, and for the full satisfaction of all Arians due to the officers and soldiers of the Army under the command of general Monk, and that they shall be received into our service upon as good pay, and conditions, as they now enjoy — Given under our Sign Manual, and Privy Signet, at our Court at Breda, the 4-14th day of April, 1660, in the twelfth year of our reign.

*The KING'S LETTER to the HOUSE of LORDS*

C. R. Right trusty and right well beloved cousins, and right trusty and well-beloved cousins, and trusty and right well beloved, we greet you well. We cannot have a better reason to promise ourselves in end of our common sufferings and calamities, and that our own just power and authority will, with God's blessing, be restored to us, than that you are again acknowledged to have that authority and jurisdiction which hath always belonged to you by your birth, and the fundamental laws of the land: and we have thought it very fit and safe for us to call to you for your help, in the composing the confounding distempers and distractions of the kingdom, in which your sufferings are next to those we have undergone ourselves, and therefore you cannot but be the most proper counsellors for removing those mischiefs, and for preventing the like for the future. How great a trust we repose in you, for the procuring and establishing a blessed peace and security for the kingdom, will appear to you by our inclosed Declaration; which trust, we are most confident you will discharge with that justice, and wisdom, that becomes you, and must always be expected from you, and that, upon your experience how one violation succeeds another, when the known relations and rules of justice are once transgressed, you will be as jealous for the rights of the crown, and for the honour of your king, as for yourselves: and then you cannot but discharge your trust with good success, and provide for, and establish the peace, happiness, and honour of King, Lords, and Commons, upon that foundation which can only support it; and we shall be all happy

in each other: and as the whole kingdom will bless God for you all, so we shall hold ourselves obliged in an especial manner to thank you in particular, according to the affection you shall express towards us. We need the less enlarge to you upon this subject, because we have likewise writ to the House of Commons; which we suppose they will communicate to you. And we pray God to bless your joint endeavours for the good of us all. And so we bid you very heartily farewell — Given at our Court at Breda, this 4-14th day of April, 1660, in the twelfth year of our reign.

*The KING'S LETTER to the FLEET.*

To our Trusty and Well-beloved General Monk, and General Mountague, Generals at Sea, to be communicated to the Fleet.

C. R. Trusty and well-beloved, we greet you well. It is no small comfort to us, after so long and great troubles and miseries, which the whole nation hath groaned under; and after so great revolutions, which have still increased those miseries, to hear that the Fleet and Ships, which are the walls of the kingdom, are put under the command of two persons so well disposed to, and concerned in, the peace and happiness of the kingdom, as we believe you to be, and that the officers and seamen under your command, are more inclined to return to their duty to us, and put a period to these distempers and distractions, which have so impoverished, and dishonoured the nation, than to widen the breach, and to raise their fortunes by rapine and violence; which gives us great encouragement and hope, that God Almighty will heal the wounds by the same plaster that made the flesh raw; that he will proceed in the same method in pouring his blessings upon us, which he was pleased to use, when he began to afflict us; and that the manifestation of the good affection of the Fleet and Seamen towards us, and the peace of the nation, may be the prologue to that peace, which was first interrupted by the mistake and misunderstanding of their predecessors; which would be such a blessing upon us all, that we should not be less delighted with the manner, than the matter of it.

In this hope and confidence, we have sent the inclosed Declaration to you; by which you may discern, how much we are willing to contribute towards the obtaining the general and public peace in which as no man can be more, or so much, concerned, so no man can be more solicitous for it. And we do earnestly desire you, that you will cause the said Declaration to be published to all the Officers and Seamen of the Fleet; to the end, that they may plainly discern, how much we have put it into their power to provide for the peace and happiness of the nation who have been always understood by them to be the best and most proper counsellors for those good ends: and you are likewise farther to declare to them, that we have the same gracious purpose to-

wards them, which we have expressed towards the Army at land; and will be as ready to provide for the payment of all arrears due to them, and for rewarding them according to their several merits, as we have expressed to the other; and we will always take so particular a care of them and their condition, as shall manifest our kindness towards them. And so depending upon God's blessing, for infusing those good resolutions into your, and their hearts, which are best for us all; we bid you farewell.—Given at our Court at Breda, this 4-14th day of April, 1660, in the twelfth year of our reign.

*The KING'S LETTER to the Lord Mayor and Aldermen of the CITY of LONDON.*

To our Trusty and Well-beloved the Lord Mayor, Aldermen, and Common Council, of our City of London.

C. R. Trusty and well-beloved, we greet you well. In these great revolutions of late, happened in that our kingdom, to the wonder and amazement of all the world, there is none that we have looked upon with more comfort, than the so frequent and public manifestations of their affections to us in the City of London; which hath exceedingly raised our spirits, and which, no doubt, hath proceeded from the Spirit of God, and his extraordinary mercy to the nation; which hath been encouraged by you, and your good example, to assert that government under which it hath, so many hundred years, enjoyed as great felicity as any nation in Europe; and to discountenance the imaginations of those who would subject our subjects to a government they have not yet devised, and, to satisfy the pride and ambition of a few ill men, would introduce the most arbitrary and tyrannical power that was ever yet heard of. How long we have all suffered under those and the like devices, all the world takes notice, to the no small reproach of the English nation; which we hope is now providing for its own security and redemption, and will be no longer be witched by those inventions.

How desirous we are to contribute to the obtaining the peace and happiness of our subjects without effusion of blood; and how far we are from desiring to recover what belongs to us by a war, if it can be otherwise done, will appear to you by the inclosed Declaration; which, together with this our letter, we have intrusted our right trusty and well-beloved cousin, the lord viscount Mordaunt, and our trusty and well-beloved servant, sir John Greenville knight, one of the gentlemen of our bed-chamber, to deliver to you; to the end, that you, and all the rest of our good subjects of that our city of London (to whom we desire it should be published) may know, how far we are from the desire of revenge, or that the peace, happiness, and security of the kingdom, should be raised upon any other foundation than the affections and hearts of our subjects, and their own con-

We have not the least doubt of your just sense of these our condescensions, or of your zeal to advance and promote the same good end, by disposing all men to meet us with the same affection and tenderness, in restoring the fundamental laws to that reverence that is due to them, and upon the preservation whereof all our happiness depends. And you will have no reason to doubt of enjoying your full share in that happiness, and of the improving it by our particular affection to you. It is very natural for all men to do all the good they can for their native country, and to advance the honour of it; and as we have that full affection for the kingdom in general, so we would not be thought to be without some extraordinary kindness for our native city in that particular; which we shall manifest on all occasions, not only by renewing their charter, and confirming all those privileges which they have received from our predecessors, but by adding and granting any new favours, which may advance the trade, wealth, and honour of that our native city; for which we will be so solicitous, that we doubt not but that it will, in due time, receive some benefit and advantage in all those respects, even from our own observation and experience abroad. And we are most confident, we shall never be disappointed in our expectation of all possible service from your affections; and so we bid you farewell. Given at our Court at Breda, the 4-14th day of April, 1660, in the twelfth year of our reign.

Lord Clarendon tells us, that "The Committee who were appointed by the House of Commons to prepare an Answer to the King's Letter, found it hard to satisfy all men, who were well contented that the King should be invited to return; but some thought, that the guilt of the nation did require less precipitation than was like to be used; and that the treaty ought first to be made with the King, and conditions of security agreed on, before his majesty should be received. Many of those, who had conferred together before the meeting of the Parliament, had designed some Articles to be prepared, according to the model of those at Killingworth, in the time of King Harry the Third, to which the King should be sworn before he came home. Then the Presbyterian party, of which there were many members in Parliament, though they were rather troublesome than powerful, seemed very solicitous that somewhat should be concluded in veneration of the Covenant; and, at least, that somewhat should be inserted in their Answer to the discountenance of the bishops. But the warmer zeal of the house threw away all those formalities and affectations: they said, 'they had proceeded too far already in their Vote upon the receipt of the letter, to fall back again, and to offend the King with colder expressions of their duty.' In the end, after some days and debate, finding an equal impatience without the walls to that within the house, they were contented to gratify the Presbyterians in the length of the Answer,



and in using some expressions which would please them, and could do the King no prejudice; and all agreed, that this Answer should be returned to his Majesty, which is here inserted in the very words."

*The Answer of the House of Commons to the KING.*

Most Royal Sovereign,

We your Majesty's most loyal subjects, the Commons of England assembled in Parliament, do, with all humbleness, present unto your Majesty the unfeigned thankfulness of our hearts, for those gracious expressions of piety, and goodness, and love to us, and the nations under your dominion, which your Majesty's letter of the 4-14th of April, dated from Breda, together with the Declaration inclosed in it of the same date, do so evidently contain. For which we do, in the first place, look up to the great King of Kings, and bless his name, who hath put these thoughts into the heart of our King, to make him glorious in the eyes of his people, as those great deliverances, which that Divine Majesty hath afforded unto your royal person, from many dangers, and the support which he hath given to your heroic and princely mind under various trials, make it appear to all the world that you are precious in his sight. And give us leave to say, that as your Majesty is pleased to declare your confidence in Parliaments, your esteem of them, and thus your judgment, and character of them, that they are so necessary for the government of the kingdom, that neither prince nor people can be in any tolerable degree happy without them, and therefore say, that you will be taken unto their counsels, be tender of their privileges, and careful to preserve, and protect them, so we trust, and will, with all humility, be bold to affirm, that your Majesty will not be deceived in us, and that we will never depart from that fidelity which we owe unto your Majesty, that zeal which we bear unto your service, and a constant endeavour to advance your honour and greatness.

And we beseech your Majesty, we may add this farther for the vindication of Parliaments, and even of the last Parliament, convened under your royal father of happy memory, when, as your Majesty well observes, through mistakes and misunderstandings, many inconveniences were produced, which were not intended, that those very inconveniences could not have been brought, without violating the Parliament itself. For they well knew it was not possible to do a violence to that sacred person, whilst the Parliament, which had vowed and covenanted for the defence and safety of that person, remained entire. Surely, sir, as the persons of our kings have ever been dear unto Parliaments, so we cannot think of that horrid act committed against the precious life of our late Sovereign, but with such a detestation and abhorrency, as we want words to express it, and, next to wishing it had never been, we wish it may never be remembered by your Majesty, to be unto you

an occasion of sorrow, as it will never be remembered by us, but with that grief and trouble of mind which it deserves; being the greatest reproach that ever was incurred by any of the English nation, an offence to all the Protestant churches abroad, and a scandal to the profession of the truth of religion here at home; though both profession, and true professors, and the nation itself, as well as the Parliament, were most innocent of it; it having been only the contrivance and act of some few ambitious and bloody persons, and such others, as by their influence were misled. And as we hope and pray, that God will not impute the guilt of it, nor of all the evil consequences thereof, unto the land, whose divine justice never involves the guiltless with the guilty, so we cannot but give due praise to your Majesty's goodness, who are pleased to entertain such reconciled, and reconciling thoughts, and with them not only meet, but as it were prevent your Parliament and people, proposing yourself in a great measure, and inviting the Parliament to consider farther, and advise your Majesty, what may be necessary to restore the nation to what it hath lost, raise up again the banks and fences of it, and make the kingdom happy by the advancement of religion, the security of our laws, liberties, and estates, and the removing all jealousies and animosities, which may render our peace less certain and durable. Wherein your Majesty gives a large evidence of your great wisdom, judging aright, that, after so high a distemper, and such an universal shaking of the very foundations, great care must be had to repair the breaches, and much circumspection and industry used to provide things necessary for the strengthening of those repairs, and preventing whatsoever may disturb or weaken them.

We shall immediately apply ourselves to the preparing of these things, and in a very short time, we hope to be able to present them to your Majesty; and for the present do with all humble thankfulness, acknowledge your grace and favour in assuring us of your royal concurrence with us, and saying, that we shall not expect any thing, from you, but what you will be as ready to give, as we to receive. And we cannot doubt of your Majesty's effectual performance, since your own princely judgment hath prompted unto you the necessity of doing such things, and your piety and goodness hath carried you to a free tender of them to your faithful parliament. You speak as a gracious king, and we will do what befits dutiful, loving, and loyal subjects; who are yet more engaged to honour, and highly esteem your Majesty, for your declining, as you were pleased to say, all foreign assistance, and rather trusting to your people; who, we do assure your Majesty, will, and do open their arms with their hearts to receive you, and will spare neither their estates, nor their lives, when your service shall require it of them.

And we have yet more cause to enlarge our praise, and our prayers to God for your Majesty, that you have continued unshaken in your

faith; that neither the temptation of allurements, persuasions, and promises from seducing papists on the one hand, nor the persecution, and hard usage from some seduced, and misguided professors of the protestant religion on the other hand, could at all prevail on your Majesty, to make you forsake the rock of Israel, the God of your fathers, and the true Protestant religion, in which your Majesty hath been bred; but you have still been as a rock yourself, firm to your Covenant with your and our God, even now expressing your zeal and affection for the protestant religion, and your care and study for the propagation thereof. This hath been a rejoicing of heart to all the faithful of the land, and an assurance to them that God would not forsake you; but after many trials, which should but make you more precious, as gold out of the fire, would restore your Majesty unto your patrimony, and people, with more splendor and dignity, and make you the glory of kings, and the joy of your subjects: which is, and shall ever be, the prayer of your Majesty's most loyal subjects, the Commons of England assembled in Parliament.

Which letter was signed by

Sir HARBOTTLE GRIMSTONE, Speaker.

*The KING's PROCLAMATION concerning Traitors, June 6, 1660.*

Whereas Owen Roe, Augustine Garland, Robert Tichbourne, &c. being deeply guilty of that most detestable and bloody treason, in sitting upon, and giving Judgment against the life of our royal father; and out of a sense of their own guilt, have lately fled and obscured themselves, whereby they cannot be apprehended and brought to a personal trial for their said treasons, according to law. We do therefore by the advice of our Lords and Commons in Parliament assembled, command, publish and declare, by this our Proclamation, That all and every the persons before named, shall within fourteen days next after the publishing of this our royal Proclamation, personally appear, and render themselves to our Speaker, &c. under pain of being excepted from any Pardon or Indemnity, both for their respective lives and estates.

The following Declaration, containing assurances of mercy, had been published by Charles the Second, during his stay in the island of Jersey in 1649:

**HIS Majesty's DECLARATION** to all His loving Subjects in his kingdom of England and Dominion of Wales, published with the advice of his Privy Council. CHARLES, the Second of that name, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all persons within our kingdom of England and dominion of Wales, to whom these presents shall come, greeting.

We cannot, without unspeakable grief and sorrow, call to mind, nor, without horror,

express, how that our dear and royal father, king Charles of ever blessed memory, hath been most barbarously and most cruelly murdered by the hands of bloody traitors and rebels, within our kingdom of England, with proceedings and circumstances so prodigious, that the particulars induce father amazement than expression: and although we have hitherto seemed silent in a matter so highly concerning us as not publicly to express to the people of England our grief of heart and high detestation of that heinous fact; yet being now safely arrived in a small part of our own dominions, at the Island of Jersey, we have thought fit rather from hence, where our kingly authority takes place, than from any foreign country, where we have been hitherto necessitated to reside, publicly to declare, That, out of a bitter sense and indignation of those horrid proceedings against our dear father, we are, according to the laws of nature and justice, firmly resolved, by the assistance of Almighty God, though we perish alone in the enterprise, to be a severe avenger of his innocent blood, which was so barbarously spilt, and which calls so loud to heaven for vengeance. And we shall therein, by all ways and means possible, endeavour to pursue and bring to their due punishment those bloody traitors, who were either actors or contrivers of that unparalleled and inhuman murder. And since it hath pleased God so to dispose, as by such an untimely Martyrdom to deprive us of so good a father, and England of so gracious a king, we do further declare, 'That, by his death, the crown of England, with all privileges, rights, and pre-eminences belonging thereunto, is, by a clear and undoubted right of succession, justly and lineally descended upon us, as next and immediate heir and successor thereunto, without any condition or limitation; without any intermission or claim; without any ceremony or solemnity whatsoever; and that, by virtue thereof, we are now in right lawfully seized of the said crown, and ought, by the laws of God, and that nation, to enjoy a royal power there as well in Church as Commonwealth; to govern the people of that kingdom according to the ancient and known laws; to maintain them in peace and justice; and to protect and defend them from the oppression of any usurped power whatsoever. And the people of that nation, by the like laws, owe unto us, and ought reciprocally to pay, duty and obedience, as unto their liege lord and sovereign. This royal right of ours is grounded upon so clear a title, is settled by such fundamental laws, confirmed by so many oaths of allegiance in all ages, is supported by such a long continued succession in our royal progenitors, and by such a constant submission of all the people, that the same can admit of no dispute; no act of our predecessors can debar us of it; no power on earth can justly take it from us; and, by the undoubted laws of that nation, to oppose us, either in the claim or ex-

ercise thereof, is a treason of the highest degree.—And although the bloody contrivers of our father's murder, out of a pernicious hatred to all monarchies, have by force, as much as in them lies, disinherited us of our princely right thereunto; banished and proscribed us; seized all our revenues; prohibited all intercourse and supplies to be sent to us; and have, by violence, imposed upon the people of England a new yoke of popular tyranny, to the utter subversion not only of our just rights, but of their laws and liberties; yet we do profess that we cannot persuade ourself that the body of the English nation hath so far degenerated from their antient loyalty and virtue, as to consent to these horrid proceedings against us, or to approve the casting off that kingly Government under which they and their forefathers have happily flourished so many ages past, to the envy of all their neighbour nations. How can that once happy nation of England despair of blessed days under a royal sceptre, and vainly hope for them under the iron rod of an insolent multitude? no, we cannot look upon these sad and dismal changes as the desires or intentions of the better part of our subjects of that kingdom; but rather as the designs and contrivances of those wicked murderers of our father; whose ambition is endless; whose avarice is unsatiable; and whose guilt hath made them desperate: and therefore out of a confidence we have of the loyalty and good affections of many of our subjects of that nation, and as well for their encouragement, ~~we~~ still persist in their natural allegiance and obedience to us, as for the security of such as shall yet return to their duties and loyalties, we have thought fit hereby further to declare.—That we are graciously pleased to receive all persons of our kingdom of England and dominion of Wales, other than such who voted or acted in that bloody murder of our dear father, into our royal grace, mercy, and protection; owning and esteeming them all as our good and loving subjects, whom, upon access to our kingly authority, we shall hold ourself bound, according to the law of God, the known laws of that nation, and the duty of our kingly office, to protect, maintain, and preserve in wealth, peace and happiness. And for a clear evidence of our good intentions towards them, we shall be contented freely to pardon, or otherwise by act to declare or hold indemnified, all persons within our said kingdom of England and dominion of Wales, except as before excepted, for any matters whatsoever relating to the late unhappy wars and distractions. And we shall, according to the example of our dear father, be ready, upon the establishment of our royal throne, to make such further concessions, for the satisfaction and security of our good subjects in general, and of all interests in particular, as shall be adjudged most to conduce to the peace and happiness of that kingdom.—And we do further declare, That we shall give our utmost assistance to restore parliaments to their an-

cient dignity and honour, and shall preserve their just privileges, and join to repair all those injuries and affronts which have been done to the members of that high court.—And because all ways of gaining a mutual confidence betwixt us and our good subjects are at present obstructed, by the usurped force and power now prevalent in that kingdom, we are therefore resolved to make use of such expedients as shall be necessary for the suppression of that tyrannical and unjust power now exercised over them, and for bringing to their due punishment those bloody murderers of our dear father, for shaking off the heavy burdens and taxes they now groan under, and for restoring our just rights, and the ancient liberties and freedom of the English nation; not doubting but we shall find all our good subjects ready to concur and to assist us in our just and pious undertakings for those ends.—And in the mean time, we require and command all our said subjects, according to their duty to God, their allegiance to us, their several oaths and protestations, and the love and affection they bear to the peace of their native country, that they do not betray their lawful king, nor the glorious liberties and laws of England, into a perpetual slavery, by acknowledgment of, or voluntary submission to, any new forms or models of government, under the name or mask of a Free State, nor under any other title or pretence whatsoever.—Given at our court at Castle Elizabeth, in our Isle of Jersey, 31st Oct. 1619, the 1st year of our reign.

In the next year, Charles was prevailed upon by the Scots, to issue the following Declaration,\* likewise containing assurances of mercy:

BY THE KING.

His Majesty taking in consideration that merciful dispensation of divine providence, by which he hath been recovered out of the snare of evil counsel, and having attained so full persuasion and confidence of the loyalty of his people in Scotland, with whom he hath too long stood at a distance, and of the righteousness of their cause, as to join in one Covenant with them, and to cast himself and his interests wholly upon God, and in all matters civil to follow the advice of his parliament, and such as shall be entrusted by them, and in all matters ecclesiastic the advice of the general assembly, and their commissioners: And being sensible of his duty to God, and desirous to approve himself to the consciences of all his good subjects, and to stop the mouths of his and their enemies and traducers, doth in reference to his former deportments, and as to his resolutions for the future, declare as follows:

\* "A Declaration by the King's Majesty to his Subjects of the Kingdoms of Scotland, England, and Ireland." Edinburgh, printed by Evan Tyler, Printer to the King's most Excellent Majesty, 1660.

Though his Majesty as a dutiful son, be obliged to honour the memory of his royal father, and have in estimation the person of his mother, yet doth he desire to be deeply humbled and affected in spirit before God, because of his father's hearkening to and following evil counsels, and his opposition to the work of Reformation and to the Solemn League and Covenant, by which so much of the blood of the Lord's people hath been shed in these kingdoms. And for the idolatry of his mother, the toleration whereof in the king's house, as it was matter of great stumbling to all the Protestant churches, so could it not but be a high provocation against him who is a jealous God, visiting the sins of the Fathers upon the children. And that his Majesty might extenuate his former course and actions, in following of the advice and taking in the way of those who are opposite to the Covenant, and to the work of God, and in excuse his delaying to give satisfaction to the just and necessary desires of the king and kingdom of Scotland, from his education and age, and evil counsel and company, and from the strange and violent proceedings of sectaries against his royal father, and in reference to religion and the present government of the kingdom of England, to which he hath the undoubted right of succession, yet knowing that he hath to do with God, he doth ingenuously acknowledge all his own sins and all the sins of his father's house, craving pardon, and hoping for mercy and reconciliation, through the blood of Jesus Christ. And as he doth value the constant edifications, that were made by his people to the throne of grace on his behalf, when he stood in opposition to the work of God, as a singular testimony of long suffering patience and mercy upon the Lord's part, and so, relying upon that, doth he hope, and shall think it is one of the greatest tokens of their love and affection to him and to his government, that they will continue in prayer and supplication to God for him, that the Lord whose will and pleasure cometh to this day, not with finding of an his own guildness, may be at peace with him, and give him to call the Lord his God, and to converse with a perfect heart and with a willing mind all the days of his life.

And his Majesty having in full persuasion of the justice and equity of all the words and articles thereof, now sworn and subscribed the national Covenant of the kingdom of Scotland, and the Solemn League and Covenant of the three kingdoms of Scotland, England and Ireland doth declare that he hath not sworn and subscribed these Covenants, and entered into the oath of God with his people, upon any sinister intention and crooked design for attaining his own ends, but so far as humanness will permit in the truth and sincerity of his heart, and that he is firmly resolved in the Lord's strength to adhere thereto, and to prosecute to the utmost of his power all the ends thereof, in his station and calling, really, constantly and sincerely all the days of his life :

In order to which he doth in the first place profess and declare, that he will have no enemies but the enemies of the Covenant, and that he will have no friends but the friends of the Covenant. And therefore as he doth now detest and abhor all popery, superstition and idolatry, together with prelacy and all errors, heresy, schism and profaneness, and resolves not to tolerate, much less allow any of these in any part of his Majesty's dominions, but to oppose him self thereto, and to endeavour the extirpation thereof to the utmost of his power; So doth he as a Christian exhort, and as a King require that all such of his subjects who have stood in opposition to the Solemn League and Covenant, and work of Reformation, upon a pretence of kindly interest, or any other pretext whatsoever, to lay down their enmity against the cause and people of God, and to cease to prefer the interest of man to the interest of God, which hath been one of those things that hath occasioned many troubles and calamities in these Kingdoms, and being insisted into, will be so far from establishing of the king's throne, that it will prove in itself of jealousy to provoke wars with him who is King of Kings and Lord of Lords. The king shall always esteem them best servants, and most loyal subjects, who serve him and seek his greatness in a right line of subordination unto God, giving unto God the things that are God's, and unto Caesar the things that are Caesar's, and resolving not to love or countenance any, who have so little conscience and piety, as to follow his interest with a prejudice to the gospel and the kingdom of Jesus Christ, which he looks not upon as a duty, but as a duty, and driving of self desires, under a pretence of maintaining royal authority and greatness.

II His Majesty being convinced in conscience of the exceeding great sinfulness and unlawfulness of that Treachery and Perfidy made with the bloody Irish Rebels, who treacherously shed the blood of so many of his faithful and loyal subjects in Ireland, and of allowing unto them the liberty of the Popish religion, for the which he doth from his heart desire to be deeply humbled before the Lord. And likewise considering how many breaches have been upon that part, doth declare the same to be void, and that his Majesty is absolved therefrom, being truly sorry that he should have sought unto so unlawful help for restoring of him to his throne, and resolving for the time to come, rather to choose affliction than sin.

III As his Majesty did in the late Treaty with his people in this kingdom, agree to re- cal and annul all Commissions against any of his subjects who did adhere to the Covenant, and monarchical government in any of his kingdoms, so doth he now declare, that by commissioning of some persons by sea, against the people of England, he did not intend damage or injury to his oppressed and harmless subjects in that kingdom, who follow their trade of merchandize in their lawful callings, but only the opposing and suppressing of those

who had usurped the government, and not only bar him from his just right, but also exercise an arbitrary power over his people, in those things which concern their persons, consciences and estates. And as since his coming into Scotland, he hath given no Commissions against any of his subjects in England or Ireland, so he doth hereby assure and declare, That he will give none to them prejudice or damage, and whatever shall be the wrongs of these usurpers, that he will be so far from avenging these upon any who are free creatures, by interrupting or stopping the liberty of trade and merchandise or otherwise, that he will seek their good, and to the utmost employ his royal power, that they may be protected and defended against the unjust violence of all men whatsoever. And albeit his Majesty desueth to constitute all the intentions of those (in reference to his Majesty) who have been active in counsel or action against the Covenant; Yet being convinced that it doth conduce for the honour of God, the good of his country, and his own honour and happiness, and for the peace and safety of these Kingdoms, that such be not employed in places of power and trust, he doth declare, that he will not employ nor give Commissions to any such, until they have not only taken oaths and sworn the Covenant, but also have given sufficient evidence of their integrity, carriage, and conformity to the word of Reformation, and shall be demonstrable of trust by the judgment of either kingdom respective. And his Majesty under this same sound, doth hereby recall all Commissions given to any such persons, concerning all such persons will so much undertake good and order in England and his subjects, and the strengthening and preserving a friendship in these kingdoms, that they will not grieve nor repine at his Majesty's resolutions and proceedings therein, much less upon discontent or any thing in a divided way unto the raising of new troubles. Especially since upon their peace and good deportment, there is a readiness left unto them in manner above expressed.

And as his Majesty hath given satisfaction to the just and necessary desires of the Kirk and Kingdom of Scotland, so doth he hereby assure and declare, that he is no less willing and desirous to give satisfaction to the just and necessary desires of his good subjects in England and Ireland; and in token thereof, if the houses of parliament in England sitting in freedom, shall send letters present unto him the propositions of peace offered upon by both kingdoms, he will not only receive to the same and such alterations therein as the Houses of parliament in regard of the constitution of affairs, and the counsel of his Majesty in the Kingdoms, shall judge necessary, but doth hereby further necessary for prosecuting the ends of the Solemn League and Covenant, especially in those things which concern the Reformation of the Church of England, in doctrine, worship, discipline, and government that not only the Directory of Worship, the Confession of Faith

and Catechism, but also the Propositions and Directory for Church Government, accorded upon by the Synod of Divines at Westminster, may be settled, and that the Church of England may enjoy the full liberty and freedom of all assemblies and power of Kirk censures, and of all the ordinances of Jesus Christ according to the rule of his own Word, and that whatsoever is commanded by the God of heaven, may be diligently done for the house of the God of heaven. And whatever heretofore hath been the suggestions of some to him, to render his Majesty jealous of his parliament, and of the servants of God; yet as he hath declared, that in Scotland he will hearken to their counsel, and follow their advice in those things that concern that kingdom and Kirk; So doth he also declare his firm resolution to manage the government of the kingdom of England, by the advice of his parliament, consisting of an house of Lords, and of an house of commons there, and in those things that concern religion to prefer the counsel of the ministers of the gospel, to all other counsels whatsoever. And that all the world may see how much he tender the safety of his people, and how precious their blood is in his sight, and how desirous he is to recover his crown and government in England by peaceable means, as he doth esteem the service of those who first engaged in the Covenant, and have since that time faithfully followed the end thereof, to be duty to God, and loyalty to him, So is he willing in regard of others, who have been involved in these late contentions in England against religion and government, to pass an Act of Oblivion, excepting only some few in that nation, who have been chief obstructors of the work of Reformation, and chief authors of the change of the government, and of the murder of his royal father. Provided, that those who are to have the benefit of this act lay down arms, and return unto the obedience of their lawful sovereign.

The Committee of Estates of the kingdom, and General Assembly of the Kirk of Scotland, having declared so fully in what concerns the sectaries, and the present designs, resolutions, and actions of their army against the kingdom of Scotland, and the same Committee and Assembly having sufficiently laid open public dangers and duties both upon the right hand, and upon the left. It is not needful for his Majesty to add any thing thereunto, except that in those things he doth commend and approve them, and that he resolves to live and die with them and his loyal subjects, in prosecution of the ends of the Covenant.

And whereas that prevailing party in England, after all their strange usurpations and insolent actions in that land, do not only keep his Majesty from the government of that kingdom by force of arms, but also have now invaded the kingdom of Scotland, who have deserved better things at their hands, and against whom they have no just quarrel, his Majesty doth therefore declare and expect that all his good subjects in England, who are and resolve

to be faithful to God and to their king, according to the Covenant, will lay hold upon such an opportunity, and use their utmost endeavours to promote the Covenant and all the ends thereof, and to recover and re-establish the ancient government of the kingdom of England (under which for many generations it did flourish in peace and plenty at home, and in reputation abroad) and privileges of the parliament, and native and just liberty of the people. His Majesty desires to assure himself that there doth remain in these so much confidence of their duty to religion, their king and country, and so many sparkles of the ancient English valour, which shined so eminently in their noble ancestors, it will put them on to bestir themselves for breaking the yoke of those men's oppression from off their necks. Shall men of conscience and honour set religion, liberties and government at so low a rate, as not rather to undergo any hazard, where they be thus deprived of them? will not all generous men count any death more tolerable, than to live in servitude all their days? and will not posterity blame those who dare attempt nothing for themselves, and for their children, in so good a cause, in such an exigent? Whereas if they gather themselves, and take courage, putting on a resolution answerable to so noble an just enterprise, they shall honour God, and gain themselves the reputation of pious men, worthy patriots, and loyal subjects, and be called the repairers of the breach, by the present and succeeding generations, and they may certainly promise to themselves a blessing from God upon so just and honourable undertaking for the Lord and for his cause, for their own liberties, their native king and country, and the invaluable good and happiness of the posterity. Whatever hath formerly been his Majesty's guiltiness before God, and the bad success that these have had who opposed his affairs, whilst he stood in opposition to the work of God, yet the state of the question being now altered, and his Majesty having obtained mercy to be on God's side, and to prefer God's interest before his own, he hopes that the Lord will be gracious and countenance his own cause, in the hands of weak and sinful instruments, against all enemies whatsoever. This is all that can be said by his Majesty at present to those in England and Ireland, at such a distance. And as they shall acquit themselves at this time in the active discharge of their necessary duties, so shall they be accepted before God, endeared to his Majesty, and their names had in remembrance throughout the world. Given at our Court at Dumfermline, the 16th day of August, 1650. And in the second year of our reign.

In Thuploe's State Papers, vol. 2, p. 248, is printed the following Instrument, also containing assurances of mercy.

By THE KING.

Charles the Second, by the grace of God

king of England, Scotland, France and Ireland, Defender of the Faith, to all our good and loving subjects, peace and prosperity. Whereas it is apparent to all rational and unbiassed men throughout the world, that a certain mechanic fellow, by name Oliver Cromwell, hath by most wicked and accursed ways and means, against all laws both divine and human, (taking opportunity through the late sad and unnatural wars in our kingdoms) most tyrannically and traitorously usurped the supreme power over our said kingdoms, to the enslaving and ruining the persons and estates of the good people our free subjects therein, after he had most inhumanly and barbarously butchered our dear father, of sacred memory, his just and lawful sovereign: these are therefore in our name to give free leave and liberty to any man whomsoever, within any of our three kingdoms, by pistol, sword, or poison, or by any other ways or means whatsoever, to destroy the life of the said Oliver Cromwell, wherein they will do an act acceptable to God and good men, by cutting so detestable a villain from the face of the earth: and whosoever, whether soldier or other, shall be instrumental in so signal a piece of service, both to God, to his king, and to his country, we do by these presents, and in the word and faith of a Christian king, promise, as a reward for his good service, to give to him and his heirs for ever 500*l*. per annum, free land, or the full sum in money, for which such a proportion may be purchased of the owners, and also the honour of knighthood to him and his heirs, and if he shall be a soldier of the army, we do also promise to give him a colonel's place and such honourable employment, wherein he may be capable of attaining to further preferment answerable to his merit. And because we know, that great numbers are involved in the same guilt with the said Oliver, more through his crafty ensnaring devices, than their own malicious or wilful inclinations, we do therefore freely pardon and forgive all and every man whatsoever, for all and every thing by them done and committed against our person, crown, and dignity, or whatsoever hath been by them done or committed in the prosecution of the late wars, provided that they or any of them so guilty shall within six days after their certain notice of Cromwell's death, renounce and forsake their rebellious courses, and submit themselves to our mercy and clemency; and also whosoever shall before that time, upon a just and fair opportunity leave partaking with those wicked men, and declare for the just rights and privileges of us and our people, his king and his country, shall not only be pardoned for whatsoever is past, but receive a signal reward, and shall be by us employed and trusted with command answerable to his quality; excepting only from this our pardon, William Lenthall late Speaker of the Commons, and John Bradshaw, president of that bloody Court, commonly called the High Court of Justice, and sir Arthur Hazelrig, and no other; but all men else to enjoy the full benefit of this our

free pardon, in case they perform the conditions above required. Given at Paris, the 31d of May 1654 [N S]

What Clarendon says of the opinion of some that "conditions of security should be agreed on," is explained by a passage in Burnet's Summary of Affairs, before the Restoration

"I need not open the scene of the new parliament, (or convention, as it came afterwards to be called, because it was not summoned by the king's writ.) Such unanimity appeared in their proceedings, that there was not the least dispute among them, but upon one single point. Yet that was a very important one. Hale, afterwards the famous Chief Justice, moved that a committee might be appointed to look into the propositions that had been made, and the concessions that had been offered by the late king during the war, particularly at the treaty of Newbury, that from thence they might digest such propositions as they should think fit to be sent over to the king. This was seconded, but I do not remember by whom. It was foreseen, that such a motion might be set on foot. So Monk was instructed how to answer it, whenever it should be proposed. He told the house, that there was yet, beyond all men's hope, an universal quiet all over the nation, but there were many incendiaries still on the watch trying where they could first raise the flame. He said, he had such copious informations sent him of these things, that it was not fit they should be generally known. He could not answer for the peace, either of the nation or of the army, if any delay was put to the sending over the king. What need was there of sending propositions to him? Might they not as well persecute them and offer them to him, when he should come over? It was to bring neither army nor treasure with him, either to fright them or to corrupt them. So he moved that they would immediately send commissioners to bring over the king. And said, that he must lay the blame of all the blood or mischief that might follow on the heads of those, who should still insist on any motion that might delay the present settlement of the nation. This was echoed with such a shout over the house, that the motion was no more insisted on.

"This was indeed the great service that Monk did. It was chiefly owing to the post he was in, and to the credit he had gained. For as to the Restoration itself, the tide run so strong, that he only went into it dextrously enough, to get much fame, and great rewards, for that which will still have a great appearance in history. If he had died soon after, he might have been more justly admired, because less known, and seen only in one advantageous light. But he lived long enough to make it known, how false judgment men are apt to make upon outward appearance. To the king's coming in without conditions may be well imputed all the errors of his reign. And when the earl of Southampton came to see what he was like to

prove, he said once in great wrath to chancellor Hyde, it was to him they owed all they either felt or feared, for it he had not possessed them in all his letters with such an opinion of the king, they would have taken care to have put it out of his power either to do himself or them any mischief, which was like to be the effect of their trusting him so entirely. Hyde answered, that he thought the king had so true a judgment and so much good nature, that when the age of pleasure should be over, and the idleness of his exile, which made him seek new diversions for want of other employment, was turned to an obligation to mind affairs, then he would have shaken off those entanglements."

It is true that in the confusions which subsisted after the deposition of Richard Cromwell, the thoughts of the nation in general were directed to the calling in of Charles the second, as the most easy, safe, and certain method of establishing permanent tranquillity, yet the co-operation of the army in that measure, which certainly could not have been effected without that co-operation, was extremely doubtful; so that it may be questioned by those who most highly respect the good intentions of the upright and patriotic Hale, whether his motion, mentioned by Burnet, was upon the whole expedient. Some delay it must have produced; and if high debates had arisen, in the course of digesting the propositions, it is by no means improbable that the Restoration might have been prevented. Mr Burke well observes, that "The king did not in reality grant an act of indemnity, the prevailing power, then in a manner the nation, granted an indemnity to him. The idea of a preceding rebellion, was not at all admitted in that convention, and that parliament. The Regicides were a common enemy and as such given up." Remarks on the Policy of the Allies, 7th vol of his works, octavo edition 1808 p 196. In another place he says "The man given to us by Monk, was a man without any sense of his duty as a prince, without any regard to the dignity of his crown, without any love to his people, dissolute, false, venal, and destitute of any positive good quality whatsoever, except a pleasant temper, and the manners of a gentleman. Yet the Restoration of our monarchy even in the person of such a prince, was every thing to us, for without monarchy in England, most certainly we never can enjoy either peace or liberty." Letter to a Member of the National Assembly, 6th vol of his Works, octavo edition, 1808, p 46.

A very curious Pamphlet respecting the State of England, printed in the year 1659, has in this year (A D 1809) been republished by the very learned and indefatigable Baron Masers, in a volume of "Occasional Essays." The title of the pamphlet is, "The Interest of England stated, Or A faithful and Just Account of the Aims of All Parties now Pretending, distinctly treating of the Designs of the Roman Catholic, the Royalist, the Presbyterian, the Anabaptist, The Army, the Late Protector, the

Parliament, with their Effects in respect of Themselves, of One Another, and of the Public; clearly evidencing the unavoidable Run upon all, from Longer Contest; and offering an Expedient for the Composure of the Respective Differences to the Security, and Advantage not only of every Single Interest, but to the bringing Solid Lasting Peace unto the Nation." The "Expedient" was the calling in of Charles the second, of whom a most favourable representation is given in the pamphlet. Some very shrewd reflections concerning the Restoration are to be found in a 30th of January sermon, preached before the Lords, by the great bishop Butler.

RESOLUTIONS OF THE JUDGES UPON THE  
CASE OF THE REGICIDES.

(From Kelyng's Reports.)

After the happy Restoration of king Charles the Second, to his right of the Crown of England, which was in May, 1660, several persons who were apprehended for the murder of his father, were now to be indicted for that horrid treason, and in order thereto, the then judges, who, at that time, were only the lord Bridgman, then Chief Baron of the Exchequer; justice Foster, and justice Hyde, then Judges of the Common Pleas, and justice Mallet, then Judge of the King's-Bench, met several times at Serjeant's-inn, in Fleet-street, with sir Geoffrey Palmer, the King's Attorney, and sir Henrage Finch, the King's Solicitor, sir Edward Turner, Attorney to the Duke of York; Mr. Waltham Windham, of Lincoln's-inn, and myself, being by special order to attend that service as counsel for the king, there being then no king's serjeant, but serjeant Glanvil, serjeant to the late king, who was then old and infirm: and in order to the proceeding in that great affair, I was appointed to make as many queries as I thought fit to be advised upon; which I did accordingly, and upon them, these things following were resolved.

1. That it was better to try those traitors at the Sessions at Newgate by Commission of Gaol-Delivery, than only by Special Commission of Oyer and Terminer, because then they might be proceeded against more speedily, and arraigned and tried immediately, by the Commission of Gaol-Delivery, and Tales might be immediately returned at the Gaol-Delivery. And accordingly writs were ordered to be made and sent to the lieutenant of the Tower, in whose custody the prisoners then were, to deliver them to the sheriffs of London, and writs to the sheriffs of London to receive them, that they might be in Newgate; which was done accordingly. And because by an Act of Parliament or Convention which sat at the king's coming in, English proceedings were continued until Michaelmas now close at hand, but not yet come; therefore those writs to the lieutenant of the Tower and sheriff of London were ordered to be in English.

2. It was agreed that all the prisoners should be arraigned the first day, before any of them

were brought to trial; and the next day to proceed to trial with one or more of them together, as should be thought fit upon the place.

3. It was resolved that any of the king's counsel might privately manage the Evidence to the Grand Inquest, in order to the finding of the Bill of Indictment, and agreed that it should be done privately; it being usual in all cases, that the prosecutors upon indictments are admitted to manage the evidence for finding; the bill, and the king's counsel are the only prosecutors in the king's case; for he cannot prosecute in person.\*

4. It was resolved, that the indictment should be, for compassing the death of the late king, (the very compassing and imagining of the king's death, being the treason within the statute 25 Edw 3,†) and then that

\* Upon the Indictment of Hardy and others for Treason, A. D. 1791, the Solicitor for the Crown attended the Grand Jury for the like purpose, at the desire of the Grand Jury and by leave of the Court. [From the information of Mr. Clarkson, the Attorney employed for Hardy.]

In the Case of the earl of Shaftsbury, A. D. 1681, *post*, the two Chief Justices, Pemberton and North, said, that it had always been the practice to examine the witnesses before the grand jury in public, whenever it had been requested by those who prosecuted for the king. Mr. Christian apprehends that to be the last instance of such a procedure. See 1 Blacket. Com. 303. 15 Ed. Note 1.

"I know not," says sir John Hawles in his Remarks on Colledge's Case, A. D. 1681, *post*, "how long the practice in that matter of admitting counsel to a grand jury hath been; I am sure it is a very unjustifiable and unsupportable one. If the grand jury have a doubt in point of law, they ought to have recourse to the court, and that publicly and not privately, and not rely on the private opinion of counsel, especially king's counsel, who are, or at least behave themselves as if they were, parties."

† The following are the words of the Statute, to which are subjoined a translation published by Mr. Luders in his "Considerations on the Law of High Treason in the Article of Levying War."

THE STATUTE OF TREASONS.

[The proceedings in Parliament, in 3 Rich. 2, 3 Parl. Ro. p. 75, describe it as the Statute made for declaration of Treason.]

*The Original French.\**

"Auxint, Pur ceo qe diverses opinions out este einz cez heure; qe en cas, quant il y avient, doit estre dit Treson, et en quel cas noun, le Roi, à la requeste des Seignurs et de la Communalte, ad fait declarissement q' ensuite; cest assavoir, En cas quant homme fait compaser ou ymaginer la mort nostre Seigneur le Roi, Ma-

\* That of the printed Parliament Roll is followed where there might be doubt. See 2 Parl. Ro. 239.



we might lay as many overt-acts as we would, to prove the compassing of his death. But it

dame sa compaigne, ou de lur fîtz primer et hen; ou si homme violast la compaigne le Roi, et la eisme fille le Roi mient marie, et la compaigne a l'eisme fîtz et heir du Roi. Et si homme leve de guere contre nostre dit Seigneur le Roi en son roialme, ou soit adheir int'is enmys nostre Seigneur le Roi en le roialme, donant a eux aide et confort en son roialme ou par ailleurs, et de ceo provablement soit atteint de overt fait pu gentz de lour condicion

"Et si homme contreface le grant seal le Roi, ou si monnoie, et si homme apporte fause monnoie en ceste roialme, contrefaite a la monnoie d'Angleterre, sicome la monnoie appelle l'usscheuill, ou autre semblable a la dite monnoie d'Angleterre, sachant la monnoie estre fause, pur m'uch muer ou p'uchement faire, en deceit nostre dit Seigneur le Roi et de son poeple

"Et si homme tuist Chancelier Tresorer ou Justice nostre Seigneur le Roi de l'un Bunk ou de l'autre, Justice en Iir, des Assises, et de toutz autres Justices assignez voir et terminer, estints en loun Places, en faisant lour office

"Et fut a entendre qe en les cas susnommez doit estre juyggee Treison, qe ce estent a nostre Seigneur le Roi, et a sa roi de Mageste. Et de tieles maneres de Treison la forfaiture des chieres appartient a nostre Seigneur le Roi, sihen des terres et tenementz tenuz des autres coe de lumesmes

"Que par ceo il y ad autre maniere de Treison, ce est si vier qui int seivint tue son mestre, un femme qe tue son P'riour, qui int homme tuer ou de religion tue son P'riour qui il doit fuir et obediencia. Et tel maniere de Treison donne forfaiture des escheques a chescun Seigneur de son fief propre

"Et par ceo qe plusors autres cas de semblable Treison, parint eschier en temps a venir qe ces hommes ne munt penser ne decliner en present, is entust, qe si autre eis suppose Treison, qe n'est a p'chiefz purmont, avient de roial devant auns Justices, demourge la Justice amsaler juygement de Treison. Et qe pu devint nostre Seigneur le Roi et son P'riement, soit le cas monstre, et de lue le quel ces doit estre juyge Treison ou autre felonie

"Et si par ceis un homme d'ce roialme chiviche\* unice descovert ou secrete ment od

\* "The proper meaning of the word *chevaucher* cannot be given now in direct translation. It appears in almost every chapter of *Tristram*, (of this same generation) in *General* military armament with numbers. It is used in this sense in other passages in the *Parliament Rolls* of this period. In a D. 1367 Roll, Lord 526, it is made an English word, in other Scotch, in the same sense." Luders. "The word *chevaucher*, like the word *occupy*, 'was in excellent good word before it was ill sorted.' It originally signified to ride on horseback. The present meaning of the word may be found in the *Dictionnaire Comique*.

was agreed, that the actual murder of the king should be precisely laid in the indictment, with

gentzarmez, contre aucun autre, pur lui tuer ou desrobber, ou pur lui prendre et retenir tant qe il face l'un ou l'autre ou pur sa delivrance avoir, nest pas l'entent du Roi et de son conseil qe en tel cas soit juyge Treison; cins soit juyge felonie ou trespass selonc la ley de la terre auncienement usee, et selonc ceo qe le cas demande. Et si en tel cas ou autre semblable devant ces heures a un Justice est juyge Treison, et par quelle cause les terres et tenementz soient deventur en la main nostre Seigneur le Roi come forfait, c'est les chefs Seignurs de fee loun escheques de tenementz de eux tenuz, le quel qe les tenementz soient en la main le Roi, ou en la main d'autres par douz, ou en autre maniere

"Sauvant totelment a nostre Seigneur le Roi l'un et le wast, et autres forfaitures des chateaux qe a lui attient en les cas susnommez. Et que briefs de Seignurs vers les terres tenantz soient grantez en tel cas, sans autre original, et sans alouer la protection nostre Seigneur le Roi en la dite suite. Et de les terres qe sont en la main le Roi soient grantez briefs as Viscontz des countees li ou les terres serront, de ouster la main sanz autre delue.

#### Old Translation.

"Item, where is divers opinions have been before this time in what case Treason shall be said, and in what not. The King, at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth. That is to say, When a man doth compass or imagine the death of our Lord the King or of our Lady his Queen, or of their eldest son and heir, or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir, or if a man do levy war against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm, giving to them aid and comfort in the Realm, or elsewhere, and that can be probably imagined of open rebellion by the people of their condition. And if a man or woman shall kill the King or Privy Seal, or his money, and, if a man bring false money into this realm, counterfeited to the money of this land, is the money called bushings, or that like to the said money of England, knowing the money to be false, to merchandise or in payment in the realm, or out of the realm, and if his people and, if a man sell the Chancellor, Treasurer, or the Judges, Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, or the other Justices assigned here in the determination, he is in the place doing such offices. And it is to be understood, that in the cases above rehearsed that ought to be judged Treason, which extends to our Lord the King and his Royal Majesty. And of such Treason the forfeiture of the Escheat, pertuneth to our Sovereign Lord, as well of the lands and

the special circumstances as it was done; and should be made use of as one of the overt-acts, to prove the compassing of his death.

tenements holden of other as of himself. And moreover, there is another manner of Treason, that is to say, when a servant slayeth his master, or a wife her husband, or when a man secular or religious, slayeth his prelate, to whom he oweth faith and obedience: And of such Treason the Escheats ought to pertain to every Lord of his own fee. And because that many other like cases of Treason, may happen in time to come, which a man cannot think nor declare at this present time; it is accorded, That if any other case supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, till the cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other felony. And if percase any man of this Realm, ride armed covertly or secretly with men of arms against any other, to slay him, or rob him, or take him, or retain him till he hath made fine or ransom for to have his deliverance, it is not the mind of the King nor his Council, that in such case it shall be judged Treason, but shall be judged Felony or Trespass, according to the laws of the land of old time used, and according as the case requireth. And if in such case, or other like, before this time, any Justices have judged Treason, and for this cause the lands and tenements have come into the King's hands as forfeit, the chief lords of the fee shall have the Escheats of the tenements holden of them, whether that the same tenements be in the King's hands, or in others, by gift or in other manner; Saving always to our Lord the King, the year, and the waste, and the forfeitures of Chattels, which pertain to him in the cases above named; And that the writs of *Scire Facias* be granted in such case, against the land tenants without other original, without allowing any protection in the said suit. And that of the lands which be in the King's hands, writs be granted to the sheriffs of the counties where the lands be to deliver them out of the King's hands without delay."

*Mr. Luders's Translation.*

"Also, Whereas there have been divers opinions heretofore, what case, when it happeneth, ought to be called Treason, and in what case not, the King, at the request of the Lords and of the Common, hath made the Declaration following: that is to say, In case where a man doth compass or imagine the death of our Lord the King, the Lady his Consort, or of their eldest son and heir; or if a man violate the King's Consort, or the King's eldest daughter being unmarried, or the consort of the King's eldest son and heir. And if a man levy war against our said Lord the King in his realm, or be adherent to the enemies of our Lord the King in the realm, giving to them aid and support in

5. It was resolved, that if any one overt-act, tending to the compassing the king's death, be laid in the indictment, that then any other

his realm or elsewhere; and thereof be attainted upon due proof of open deed by people of their condition.

"And if a man counterfeit the great seal of the King, or his money; and if a man bring false money into this realm, counterfeiting the money of England, as the money called Lushburghs, or other like unto the said uncency of England, knowing the money to be false, to merchandise or make payment, in deceit of our said Lord the King and his people.

"And if a man slay the Chancellor, Treasurer, or Justice of our Lord the King of either Bench, a Justice in Eyre, and of the Assises, and all other Justices assigned to hear and determine, being in their Court, doing the duty thereof.

"And be it known that in the cases above-named there ought to be judgment of Treason, for that it extendeth unto our Lord the King, and his royal majesty. And of such sort of Treason the forfeiture of escheats belongeth to our Lord the King, as well of lands and tenements holden of others as of himself.

"Moreover, there is another sort of Treason, that is to say, When a servant slayeth his master, a wife slayeth her husband; when a man of religion or secular slayeth his prelate to whom he oweth faith and obedience. And such sort of Treason giveth the forfeiture of escheats to every Lord in his own fee.

"And forasmuch as many other cases of like Treason may happen in time to come, which a man cannot think or declare at this present, it is assented, That, if another case, supposed to be treason, which is not above-specified, should happen anew before any Justices, the Justice shall tarry, without proceeding to the judgment of Treason; until the case be shewed before our Lord the King and his Parliament, and it be declared whether this ought to be adjudged Treason or other felony.

"And if it happen that any man of this realm should ride forth in arms, openly or secretly, with armed men against any other, to slay him or rob him, or to seize and detain him until he make fine or ransom for his deliverance, it is not the intent of the King and his Council that in such case it should be adjudged Treason; but it shall be adjudged felony or trespass, according to the law of the land of old time used, and according to what the case requireth. And if in such case or other like before this time, any Justice shall have adjudged it Treason, and for this cause the lands and tenements have come into the hand of our Lord the King as forfeit, the chief Lords of the fee shall have their escheats of the tenements holden of them, whether the tenements be in our Lord the King's hand, or in the hand of others by gift or otherwise.

"Saving always to our Lord the King the year and waste, and other forfeitures of chattels

act, which tends to the compassing of the king's death, may be given in evidence, together with that which is laid in the indictment.\*

which belong to him in the cases above-named. And writs of Scire facias against the landholders shall be granted in such case, without other original, and without allowing the protection of our Lord the King in the said suit. And of the lands that are in the King's hand, Writs of Outsterlemain shall be granted to the Sheriffs of the Shires where the lands may be, without further delay."

See also Mr. Barrington's Observations on 25 Ed 3, st. 5.

\* By st. 7 W. 3, c. 3, § 8, it is enacted, "That no evidence shall be admitted or given of any overt-act that is not expressly laid in the indictment against any person or persons whatsoever." Mr. East, (Pleas of the Crown, ch. 2, sec. 57), following Foster, says, "That this rule, though expressly prescribed by the statute, in order to suppress some abuses that had appeared in the heat of prosecutions for treason, is in truth no more than the common law itself directs generally. For in no case is a prisoner bound to answer unprepared for every action of his life, but only to that which is the subject of the indictment against him: and therefore no evidence ought to be admitted in any prosecution but what immediately relates to the crime imputed. This I think was always the law as well as the just rule in this particular case, though it must be owned that some high authorities did seem to countenance a contrary doctrine; which justifies the caution and wisdom of parliament in securing the observance of the rule by a legislative provision. But the meaning of the statute has often been attempted to be strained the other way; and such a construction has been argued for as would, if it had prevailed, have made it necessary to set forth specifically every fact intended to be proved at the trial. The true sense of the clause is, that no overt-act amounting to a distinct independent charge, though falling under the same head of treason, shall be admitted in evidence, unless it be expressly laid in the indictment; but an overt-act may be given in evidence, though it be not expressly laid, or not well laid in the indictment, if it amount to direct proof of any overt-act which is well laid."

"On the other hand, if the overt-act offered in evidence and not laid in the indictment be no direct proof of any of the overt-acts charged, but merely go to strengthen the evidence or suspicion of some of those overt-acts by a collateral circumstance, such evidence cannot be admitted, notwithstanding the opinion of lord Hale to the contrary."

"But though some overt-acts must be laid and proved in the instances before-mentioned, yet it is not necessary that the whole detail of the evidence should be set forth. The common law never required this exactness; and the statute of William does not make it necessary

6. It was resolved that there need not be two witnesses to prove every overt-act, tending to the compassing of the king's death. But one witness to prove one overt-act tending to the compassing of the king's death, and another witness to prove another act tending to the same end, are sufficient; for compassing the king's death, is treason. And then if two several witnesses prove two several acts, tending to the compassing the king's death; that treason is proved by two witnesses, as the law in case of treason requireth.\*

7. It was resolved, that if several persons be indicted together in one indictment for one crime, in case some of them be found guilty by one jury, and afterwards some of the same jury be returned for trial of others in the same indictment; it is no challenge for those prisoners to say, that those jurors have already given their verdict, and found others guilty who are indicted in the same indictment for the same offence; for though they are all indicted in the same indictment for the same offence, yet in the law it is a several indictment against every one of them, and the crime is several, and one may be guilty, and not another; and the jury are to give their verdict upon particular evidence, against every several person, and therefore the finding one guilty is no argument or presumption that those jurors will find another guilty †

to charge particular facts where it was not necessary before. It is sufficient that the charge be stated with reasonable certainty, so that the prisoner may be apprised of the nature of it. Thus the laying, that A. and B met and proposed the means how to effect the king's death, is sufficient, without alleging the particular means upon which they agreed, which is matter of evidence."

"The rule, of rejecting all manner of evidence in criminal prosecutions that is foreign to the point in issue, is founded on sound sense and common justice. For no man is bound at the peril of life or liberty, fortune or reputation, to answer at once and unprepared for every action of his life. Few even of the best of men would choose to be put to it. And had not those concerned in state prosecutions, out of their zeal for the public service, sometimes stepped over this rule in the case of treasons, it would perhaps have been needless to have made an express provision against it in that case; since the common law, grounded on the principles of natural justice, hath made the like provision in every other." Foster's Disc. of High Treason, ch. 2. sec. 9.

See more concerning the laying and proving of overt-acts in Mr. East's 2d chap. sect. 52, 54, 56, 58, 59, 60, 61.

\* As to this, see Foster's Disc. of High Treason, ch. 3 s. 8. East's Pleas of the Crown, ch. 2. s. 63, 64. Love's Case, ante, p. 43. Lord Stafford's Case, A. D. 1680, post.

† See the Cases of Charles Cranborne and of Peter Coote, both for the Assassination Plot, 3 R.

8. It was resolved, that if several prisoners be put upon one jury, and they challenge peremptorily, and sever in their challenges, that then he who is challenged by one, is to be drawn against all, because the pannel being joint, one juror cannot be drawn against one, and serve for another. But in such case it was agreed the pannel might be severed, and that the same jury might be returned betwixt the king and every one of the prisoners, and then they are to be tried severally; and there the challenge of one prisoner is no challenge to disable the juror so challenged against another prisoner. And the Case of Dr. Ellis's servant, Plow. Com. 109, 101, was agreed to be good law, as to the severing of the pannels in that Case; and accordingly, afterwards upon the trial of Harrison and others, who challenged peremptorily, and severed in their challenges particular jurors, the pannels were severed.\*

9. It was resolved, that when the prisoners come to the bar to be tried, their irons ought to be taken off, so that they be not in any torture while they make their defence, be their crime

A. D. 1696, *post*. Scroop, the second of the Regicides tried, desired that those who had been challenged on the former trial might not be called again. But the Court said, 'No: that cannot be: that is nothing to you.' But in the Case of sir Miles Stapleton, tried for High Treason, at York, A. D. 1681, *infra*, the prisoner having enquired, whether those that served on the juries of lady Tempest, Mr. Thuring, and Mr. Inglehy, appeared, was answered by the Judge (Dolben), that if they did, care should be taken that they should not be sworn.

\* See also the Cases of lord Preston, Ashton and Ellott, A. D. 1690, of Charnock, King and Keyes, A. D. 1695; of Rookwood, Cranburne and Lovick, A. D. 1696; of Noble, Sayer and Salisbury, A. D. 1713; of Jackson, Carter and others, A. D. 1749; of Swan and Jefferys, A. D. 1751.

† In Cranburne's Case, A. D. 1696, *post*, when the prisoner, who had been previously arraigned, was brought to the bar, in order for trial, or for some previous motion on his behalf to be made by his counsel, (before which the chief justice required that the prisoner should be in Court) the prisoner being in irons, Holt, Ch. Just. without any application to him said, "Look you, keeper, you should take off the prisoners irons when they are at the bar, as for they should stand at their ease when they are tried," and Powell, Just. added, "It should be done: they ought to plead at ease. But the keeper saying that they had not in Court any instruments with which the irons could be taken off, it seems that the prisoner continued at the bar in his irons, while certain preliminary exceptions taken on his behalf were argued. When these were disposed of, the Court continued for two hours to dine previously to his trial, and the Ch. Just. said, "meanwhile,

never so great. And accordingly upon the arraignment and trial of Hewlet and others, who were brought in irons, the Court commanded their irons to be taken off.

you keeper, knock off the prisoner's fetters.' In Vaughan's Case, A. D. 1696, *post*, when the prisoner (he also had been previously arraigned) was brought to the bar, he desired his irons might be taken off, and Holt, Ch. Just. immediately said, 'Ay, ay, take them off.' In Laver's Case, A. D. 1732, it was strongly urged by the prisoner and his counsel, that his irons should be taken off before he pleaded, and among other authorities this ninth resolution was cited; and it was said that at the trial of Cranburne, when he was brought up here, before my lord chief justice Holt, he insisted that his chains should be taken off, and it was ordered: But by Pratt, Ch. Just., "No doubt when he comes upon his trial, the authority is that he is not to be in *Vinculis* during his trial, but should be so far free, that he should have the use of his reason, and all advantages to clear his innocence. Here he is only called upon to plead by advice of his counsel; he is not to be tried now; when he comes to be tried, if he makes that complaint, the Court will take care he shall be in a condition proper to make his defence; but when he is only called upon to plead, and his counsel by him to advise him what to plead, why are his chains to be taken off this minute, and to be put on again the next?" The Chief Justice more over said, "If we should order his chains to be taken off, and he escape, I do not know but we are guilty of his escape." Some preliminary objections taken by the prisoner and his counsel were argued on two several days, and during the whole of those proceedings he continued in irons at the bar. On the second of these days he pleaded, Not Guilty, after which some time was spent upon applications for delay of his trial, for permission that his wife and sister might have access to him, and for process to compel the attendance of his witnesses; and during all this time he continued at the bar in irons. On a third day he was brought up to take his trial, and when the first juryman was called, application was made by the prisoner's counsel that his irons might be taken off; and the Ch. Just. said, "The irons must be taken off: we will not stir till the irons are taken off." After conviction he was brought up another day for judgment, and when the clerk of the crown had asked him what he could say why the Court should not give judgment, &c., his counsel said:

*Prisoner's Counsel.* Is it your lordship's pleasure to give any directions touching the matter of the prisoner's being in irons? I hope your lordship will order them to be taken off, at least during his attendance here.

L. C. J. I don't know, there is none of the Cases that have been, which go farther than during the time of his trial; his trial is over, if he hath any thing to offer to the Court, and

10. It being agreed, that the murder of the king should be especially found, with the circumstances, in the Indictment; and it being not known who did that villainous act; it was resolved, that it should be laid that *Quidam ignotus*, with a visor on his face, did the and that was well enough; and the other persons be laid to be present, aiding and assisting thereunto.

11. The compassing the king's death being agreed to be laid in the Indictment, to be 29 Jan. 24 Car. 1. and the murder on the 30th of the same January, it was questioned in which king's reign the 30th Jan. should be laid to be, whether in the reign of king Charles the first, or king Charles the second; and the question grew, because there is no fraction of the day; and all the Acts which tended to the king's mur-

thinks he may not be able to do it so well while he is under these irons, I would recommend it to Mr. Attorney, not to make a precedent of it, that his irons may be taken off.

*Prisoner* Yes, my lord, I have a great deal to say, which I shall offer in arrest of judgment.

*Prisoner's Counsel* He hath complained since he hath been here, that he is in great pain, in the position he stands with his irons.

*L. C. J.* Come, brother Pengelly, have you any thing to object against his irons being taken off, or do you consent to it?

*Counsel for the Crown* My lord, we don't oppose it.

Then the irons were taken off.

At the end of Fletcher's Case, A. D. 1746, *post*, it is said "N. B. The prisoner desired that his fetters might be taken off while he was on his trial, which the Court granted."

Blackstone, in his Commentaries, b. 4, ch 25, says, "It is laid down in our ancient books, [Bract. l. 3, de Coron. c. 18. sec. 3 Mirr. c. 5, s. 1, § 54. Flet. l. 1, c 31, § 1. Brit. c. 5 Staundf P. C. 78. 3 Inst. 34. Kel. 10. 2 Hal. P. C. 210. 2 Hawk. P. C. 308], that, though under an indictment of the highest nature, he must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape, and then he may be secured with irons. But yet in Laver's Case, A. D. 1722, a difference was taken between the time of arraignment, and the time of trial; and accordingly the prisoner stood at the bar in chains during the time of his arraignment." To which Mr Christian adds, in a note to the fifteenth edition, "It has since been held that the Court has no authority to order the irons to be taken off, till the prisoner has pleaded and the jury are charged to try him." Waite's Case, Leach 24. It may be observed that Mr. Leach's report states that Waite was tried before Baron Keynolds, whereas it appears from East's Pleas of the Crown, ch. 16. s. 17, that it is what he calls Shapleigh's MS (to which he tells us Mr. Just. Bullen gave the praise of accuracy) Carter and Denison are said to have been the judges.

der, until his head was actually severed his body, were in the time of his and after his death in the reign of king the second. And though it was agreed by all, except justice Mallet, that one and the same day might in several respects, and as to several Acts, be said to be entirely in two king's reigns, so that in some respects the whole day may be ascribed to one, and in other respects the whole day ascribed to the other, according to the truth in the matters of fact which were noted, either in the life or after the death of the first king; yet because justice Mallet was earnest that the whole day was to be ascribed to king Charles the second; therefore it was agreed, that in that place, no fear of any king should be named, but that the compassing of the king's death should be laid on the 29th Jan. 24 Car. 1. And the other acts tending to his murder, and the murder itself, laid to be *tricesimo mensis ejusdem Januarii*, without naming any year of any king, which was agreed to be certain enough.

12. It being agreed, that the Indictment should be for compassing the king's death, and one of the overt acts to be the actual murder of the king: It was resolved the Indictment should conclude '*contra pacem nuper domini regis coron' et dignitat' suam, necnon contra pacem domini regis nunc coron' et dignitat' suas.*'

13. The question was put, whether the recorder of London should give the Charge to the grand inquest at Hlicks's-Hall, where the Indictment was to be found, the fact being in Middlesex; and also whether judgment at the Sessions house, where the prisoners were to be tried, should be given by the recorder, or whether the Charge and the judgment should be given by the Chief Judge: And it was agreed that both should be given by the Judge. And accordingly this was done by my lord Bridgeman, and he gave the Charge only relating to enquire of the murderers of the late king, without mixing any other matter then to be enquired of: and after the Charge, one Indictment was preferred against all the king's murderers, who were in prison, and also against several others who were not then apprehended, but agreed they should be attainted by an outlawry upon the same Indictment. And the same day the Indictment was found, and the next day delivered at the Gaol-Delivery, in the Sessions-house in the Old-Bailey, which day all the prisoners were arraigned, and pleaded Not Guilty, but afterward some of them withdrew their Plea, and confessed the Indictment, viz.

14. Sir Händress Waller, and Geo. Fleetwood, which was accordingly recorded by the Court, and agreed by all the judges, that it might be done, although the clerk had their plea of Not Guilty; for that such a one '*pactus, or relicta*' '*cognovist Indictamentum.*'

Memorandum, That the Indictment was in Latin, it being preferred after Micholmas, until which time, all English proceedings were

allowed by that Convention which was sitting when the king was restored.

"And after, all the prisoners who pleaded Not Guilty, were convicted upon full Evidence, and had Judgment of High Treason."

"And in case of High Treason, If any one do any thing by which he sheweth his liking and approbation to the traitorous design, this is in him High Treason: For all are principals in High Treason, who contribute towards it by action or approbation.

"And it was resolved that though in case a man be indicted only for words, that is not High Treason. But if a man be indicted for compassing the king's death, there words may be laid as an overt-act to prove that he compassed the death of the king, as it was in the Case of Crohagan, who being beyond sea, spake these words, 'I will kill the king if I can come at him;' and afterwards he came to England, and was taken and indicted for compassing the king's death, and these words laid as an overt-act, and proved, and he had Judgment of High Treason. And Co. Pl. Cor. 14, agreeth, that words set down in writing, are an overt-act to prove the compassing the king's death, as in the Case of Cardinal Poole there cited, and words spoken are the same thing if they be proved; and words are the natural way for a man whereby to express the imagination of the heart. If it be any way declared that a man imagineth the king's death, that is the Treason within the stat. 25 Edw. 3."

The following passage in Kelyng, concerning the law of High Treason, though not relating to this particular Case, may be interesting from its connection with the question which was so long and so stubbornly litigated (for the present settled by stat. 36 G. 3, c. 7.) whether a conspiracy to levy war against the king, is High Treason, under st. 25 Edw. 3.

"Memorandum, That a week before Christmas, 15 Oct. 2, my brother Turner, myself, and my brother Archer, were appointed by the king to go to York, for the trial of several persons there taken for conspiring to levy war against the king, and some of them did actually meet in Farneleigh-wood near unto Leeds, with horses, arms, and foot soldiers. And thereupon there was a meeting by the two Chief Justices, my lord Hyde, and my lord Bridgeman; and we three with sir Jeffery Palmer the king's attorney, and sir Henage Finch the king's Solicitor, did thereupon debate several things, which were agreed by us all, viz.

"1. That if several persons do agree to levy war, and some of them do actually appear in arms, and others do not, this is an actual levying of war in all of them, as well those who were not in arms, as those who were, if they be proved to be of the Plot with them who did actually appear in arms; for there are no accessories in Treason, and therefore all that are in the conspiracy are equally guilty.

"In the next place, we being informed that though there was a conspiracy to raise war in

the North Riding of Yorkshire, as well as the West Riding, where some did actually appear in arms, yet it could not be proved that those in the North Riding did agree to the rising that was in the West Riding, or that they knew any thing of it, and so would not be within the first Resolution.

"And thereupon the new statute made the 13 Car. 2, for the safety of the king's person, which maketh the conspiracy compassing and intending to raise war to be High Treason, in case they express or declare such imaginations, intentions, &c. by printing, writing, preaching, or malicious and advised speaking; and upon that act it was agreed,

"2. That if one be indicted for imagining or intending to levy war, there must be some overt-act laid in the Indictment to prove such imagination, as there is at this day in Indictments for compassing and imagining the king's death; and it was conceived that no overt-act could be laid to make it Treason within that statute, but one of those which are named in that statute, viz. printing, writing, preaching, or malicious and advised speaking, and we were informed that no printing, writing, or preaching could be proved, and it would be impossible to lay such words as could be fastened on them, and to prove that they spoke them; but in general we were informed, that their consulting and meeting together, and agreeing to raise war would be proved; and thereupon it was resolved that the best and safest way to proceed against them, was to indict them for compassing and imagining the death of the king, and to lay the meeting, consulting, and agreeing to levy war, as one overt-act, and the actual levying war as another overt-act, and so proceed upon the statute 25 Edw. 3.

"3. For it was resolved, and agreed by all now as it was before it was in Tong's Case, and sir H. Vane's Case, that the meeting and consulting to levy war is an overt-act to prove the compassing the king's death, within the statute of 25 Edw. 3. Although the consulting to levy war is not actual levying within the statute, and so cannot be indicted thereupon, for that Treason of levying war. Yet if they be indicted for the Treason of compassing and imagining the king's death, that consulting to levy war is an overt-act to prove that Treason, although Co. Pl. Cor. 14, delivers an opinion against this.

"4. It was resolved, that if persons do actually levy war, so that they may be indicted for the Treason of levying of war, within the stat. 25 Edw. 3, yet they may be indicted for compassing the king's death, and their actual levying of war may be laid as an overt-act to prove the compassing the king's death: And though Co. Pl. Cor. 14, be of another opinion, yet that is no law: For he expressly contradicts himself, for he reports the Case of the lord Cobham, 1 Jac. 1.

"And the Case of the earl of Essex 43 Eliz. where it was resolved by all the judges, That the gathering of men together to compel

the king to yield to certain demands, or to remove ill counsellors, was an overt-act to prove the compassing of the king's death, for which they were indicted, so Co. Pl. Cor. 12, accords, and in the same book, fo. 14, &c. agreeth. That if a subject conspire with a foreign prince beyond seas to invade the realm, and prepare for the same by some overt-act, this is a sufficient overt-act to prove him guilty of Treason in compassing the king's death. And it was observed that in these Posthumous Works of sir E. Coke, of the Pleas of the Crown, and Jurisdiction of Courts, many great errors were published, and in particular in his Discourse of Treason, and in the Treatise of Parliaments.

"5. It was agreed that the bare knowledge of Treason, and the concealment of it, was not High Treason, but Misprision of Treason. But in case any thing be proved upon evidence, that the party liked or approved of it, then it is High Treason; or if the party knew of the design, and after such knowledge, met with the conspirators at their consultation; or if he went knowingly to their consultations several times, this is evidence of his approbation of the design, and is High Treason.

"6. It was agreed that to make a Misprision of Treason, there must be a knowledge of the design, and of the persons, or some of them; for a man cannot be said to conceal what he doth not know; and therefore, if one tell I. S. in general, that there will be a rising without acquainting him with the persons who are to rise, or with the nature of the plot, if I. S. conceal this, this is no Misprision of Treason, because he hath no knowledge of the Treason.

"7. It was agreed that if one knew of a Treason, and knew some of the conspirators, and then tell other men in general terms that there will be a rising, &c. without a discovery of the Plot, or the Traitors, such a discourse will not acquit him from Misprision of Treason by concealment of it, because notwithstanding those general discourses, both the Treason and the Traitors are concealed by him.

"8. And in case such a person who knoweth of a Treason, and the Traitors, and discovers all he knoweth to another person who is not a privy counsellor, or a justice of peace, or hath authority to take examinations concerning it, it was doubted whether such a discovery would acquit him from concealing of Treason, which is Misprision."

THE PROCEEDINGS, BEGAN AT HICK'S-HALL, IN THE COUNTY OF MIDDLESEX, THE 9TH OF OCTOBER 1660.\*

The Court being set, the Commission of Oyer and Terminer, under the Great Seal of

\* "This important business," says Ludlow, exasperated at the Restoration, "had been delayed during the time Mr. Love was to continue sheriff of London; he being no way to be induced, either for fear or hopes, to permit Juries to be packed, in order to second the

England, was first read. It was directed to the lords and others hereafter named, viz.

Sir Tho. Aleyn, knt. and baronet, Lord Mayor of the City of London.	Sir Fred. Cornwallis, knight and baronet, Treasurer of his Majesty's Household.
The Lord Chancellor of England.	Sir Ch. Barkely, knt. Comptroller of his Majesty's Household.
The Earl of Southampton, Lord Treasurer of England.	Mr. Sec. Nicholas.
Duke of Somerset.	Mr. Secretary Morris.
Duke of Albemarle.*	Sir A. A. Cooper.
The Marquis of Ormond, Steward of his Majesty's Household.	Arthur Anesly, esq.
The Earl of Lindsey, Great Chamberlain of England.	The Lord Chief Baron.
Earl of Manchester, Chamberlain of his Majesty's Household.	Mr. Justice Foster.
Earl of Dorset.	Mr. Justice Mallet.
Earl of Berkshire.	Mr. Justice Hide.
Earl of Sandwich.	Mr. Baron Atkins.
Viscount Say and Seal.	Mr. Justice Twisden.
Lord Roberts.	Mr. Justice Tyrrel.
Lord Finch.	Mr. Baron Turner.
Denzill Hollis, esq.	Sir Harbottle Grimstone, knt. and bart.
Sir Geoffrey Palmer, Attorney-General.	Sir Wm. Wild, knt. and baronet, Recorder of London.
Sir Heneage Finch, Solicitor-General.	Mr. Serjeant Brown.
Sir Edward Turner, Attorney to his highness the Duke of York.	Mr. Serjeant Hale.
Wadham Windham, esq.	John Howel, esq.
Edw. Shelton, esq. Clerk of the Crown.	

designs of the Court. But after new sheriffs had been chosen, more proper to serve the present occasion, a commission for hearing and determining the matter was directed to 84 persons; of whom 15 had actually engaged for the parliament against the late king, either as members of parliament, judges, or officers in their army, most, if not all of them, the Lord Mayor excepted, having been put into places of trust and profit since the late revolution!" 3 Ludlow 48.

\* "Colonel George Monk," says Ludlow, "being commissioned to be of this number, was not ashamed to sit among them; any more than Mr. Denzil Hollis, and the earl of Manchester who having been two of the six members designed by the late king for destruction, before the beginning of the war, and therefore personally concerned in the quarrel, had contributed the utmost of their endeavours to engage divers of the gentlemen (upon whom they were now to sit as judges) on that side, were not contented to abandon them in this change, but assisted in condemning them to die for their fidelity to that cause which themselves had betrayed. Mr. Arthur Annesley, who had been also a member of the parliament whilst they made war against the king, was also one of the number. Finch, who had been accused of high treason twenty years before, by a full parlia-

## The Grand Jury sworn were

Sir William Darcey,	Robert Giddon, esq.
baronet, Foreman.	John Fotherly, esq.
Sir Rob. Bolles, bart.	Charles Gibbons, esq.
Sir Edward Ford, knt.	Thomas Gerec, esq.
Sir Thomas Prestwick.	Richard Cox, esq.
Sir Wm. Coney, knt.	Robert Bladwell, esq.
Sir Ch. Sudley, bart.	Henry Mustian, esq.
Sir Lewis Kirk, knt.	John Markham, esq.
Sir H. Littleton, bart.	Edward Buckley, gent.
Sir Ralph Bovey, bart.	Francis Bluchier, gent.
Edward Chaid, esq.	Edward Lole.

Hart, Crier.

ment, and who, by flying from their justice, had saved his life, was appointed to judge some of those who should have been his judges. And Sir Orlando Bridgman, who, upon his submission to Cromwell, had been permitted to practise the law in a private manner, and under that colour had served both as spy and agent for his master, was intrusted with the principal management of this tragical scene."

Of Monk, Mr. Fox says, "The army, by such a concurrence of fortuitous circumstances as history teaches us not to be surprised at, had fallen into the hands of one, than whom a baser could not be found in its lowest ranks. Personal courage appears to have been Monk's only virtue: reserve and dissimulation made up the whole stock of his wisdom. But to this man did the nation look up, ready to receive from his orders the form of government he should choose to prescribe. There is reason to believe, that from the general bias of the Presbyterians, as well as of the Cavaliers, monarchy was the prevalent wish; but it is observable that although the parliament was, contrary to the principle upon which it was pretended to be called, composed of many avowed royalists, yet none dared to hint at the Restoration of the King, till they had Monk's permission, or rather command, to receive and consider his letters. It is impossible, in reviewing the whole of this transaction, not to remark that a general who had gained his rank, reputation, and station in the service of a republic, and of what he, as well as others, called, however falsely, the cause of liberty, made no scruple to lay the nation prostrate at the feet of a monarch, without a single provision in favour of that cause: and if the promise of indemnity may seem to argue that there was some attention, at least, paid to the safety of his associates in arms, his subsequent conduct gives reason to suppose, that even this provision was owing to any other cause, rather than to any generous feeling of his breast. For he afterwards not only acquiesced in the insults so meanly put upon the illustrious corpse of Blake, under whose auspices and command he had performed the most creditable services of his life, but in the trial of Argyle, produced letters of friendship and confidence, to take away the life of a nobleman, [Barnet. Bailie's letters, II, 431.] the zeal and cordiality of whose co-

After proclamation for silence was made, it pleased Sir Orlando Bridgman, Lord Chief Baron of his Majesty's high Court of Exchequer, to speak to the Jury as followeth:

*The Lord Chief Baron's Speech.*

Gentlemen; You are the grand Inquest for the body of this county of Middlesex. You may perceive by this Commission that hath been read, that we are authorised by the king's majesty to hear and determine all Treasons, felonies, and other offences within this county: But because this Commission is upon a special occasion, the execrable murder of the blessed king, that is now a saint in heaven, king Charles the 1st, we shall not trouble you with the heads of a long charge. The ground of this Commission was, and is, from the Act of Oblivion and Indemnity. You shall find in that act there is an Exception of several persons, who (for their execrable treasons, in sentencing to death and signing the Warrant for the taking away the life of our said sovereign) are left to be proceeded against as traitors, according to the laws of England, and are out of that act wholly excepted and fore prized.

Gentlemen, You see these persons are to be proceeded with according to the laws of the land; and I shall speak nothing to you but what are the words of the laws. By the statute of the 25th of Edward the 3d, (a Statute or Declaration of Treason) it is made High-Treason to compass and imagine the death of the king. It was the ancient law of the nation. In no case else imagination, or compassing, without an actual effect of it, was punishable by our law, 'Nihil efficit conatus nisi sequatur effectus;' that was the old rule of law: But in the case of the king, his life was so precious, that the intent was treason by the common law; and declared treason by this statute. The reason of it is this: In the case of the death of the king, it is the head of the Commonwealth that's cut off; and what a trunk, and inanimate lump, the body is when the head is gone, you all know. For the life of a single man, there is the life of the offender; there is some recompence, life for life: But for the death of the king what recompence can be made? This compassing and imagining the cutting off the head of the king is known by some Overt-Act. Treason it is in the wicked imagination, though not treason apparent; but when this poison swells out of the heart, and breaks forth into action, in that case it is High-Treason.

Then what is an Overt-Act of an imagination or compassing of the king's death? Truly, it is any thing which shows what the imagination is. Words, in many cases, are evidences of this

operation with him, proved by such documents, was the chief ground of his execution: thus gratuitously surpassing in infamy those miserable wretches who, to save their own lives, are sometimes persuaded to impeach, and swear away, the lives of their accomplices."



imagination; they are evidences of the heart. Secondly, as words; so if a man, if two men do conspire to levy war against the king (and, by the way, what I say of the king, is as well of the king dead, as living; for, if a treason be committed in the life of one king, it is treason, and punishable in the time of the successor;) then, I say, in case not only of words, but if they conspire to levy war against the king, there is another branch of this statute, the Levying of War is treason. But if men shall go and consult together, and this is to kill the king, to put him to death, this consultation is clearly an Overt-Act to prove this imagination, or compassing of the king's death.

But what will you say, then, if men do not only go about to conspire and consult, but take upon them to judge, condemn, nay put to death, the king? Certainly, this is so much beyond the imagination and compassing, as it is not only laying the cockatrice's egg, but brooding upon it till it hath brought forth a serpent. I must deliver to you for plain and true law, That no authority, no single person, no community of persons, not the people collectively, or representatively, have any coercive power over the king of England. And I do not speak mine own sense, but the words of the laws unto you. It was the treason of the Spencers in king Edward the 2nd's time, in Calvin's Case, seventh Report.\* The Spencers had an opinion, that all homage and allegiance was due to the king, by reason of the crown, as they called it. And thereupon (say the Books and Records) they drew out this execrable inference (among others,) That if the king did not demean himself according to right, because he could not be reformed by law, he might *per asperitatem*, that is, by sharp imprisonment; but this was adjudged horrid treason by two Acts of Parliament.

Gentlemen, Let me tell you what our Law-Books say; for there is the ground, out of which (and the Statutes together) we must draw all our conclusions for matter of government. How do they style the king? They call him, 'The Lieutenant of God,' and many other expressions in the Book of 1 Henry 7; says that Book there, 'the king is immediate from God, and hath no superior.' The Statutes say, That the Crown of England is immediately subject to God, and to no other power. The king (say our Books,) He is not only *Caput Populi*, the head of the people; but *Caput Republicæ*, the head of the Commonwealth, The Three Estates. And truly thus our Statutes speak very fully. Common experience tells you, when we speak of the king, and so the Statutes of Edw. the 3rd, we call the king, 'Our Sovereign Lord the King;' 'Sovereign,' that is, 'Supreme.' And when the Lords and Commons in Parliament apply themselves to the king, they use this expression, 'Your Lords and Commons, your faithful subjects,

'humbly beseech.' I do not speak any words of my own, but the words of the laws. Look upon the Statute, 1 James, there is a recognition, that the crown of England was lawfully descended on the king and his progeny. [The Statute itself was read, to which it is desired the Reader will be referred.]

These are the words of the Act. And this is not the first Precedent; for you shall find it 1 Eliz. c. 3. They do acknowledge the imperial crown lawfully descended on the Queen, the same recognition with this. Before that (because we shall shew you we go upon grounds of law in what we say) Stat. 24 Hen. 8. cap. 19. "Whereas by sundry old authentic Histories and Chronicles it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same, &c."

25 Hen. 8, c. 21. There it is the people speaking of themselves, That they 'do recognize no superior under God, but only the king's grace.' Gentlemen, You see, if the king be immediate under God, he derives his authority from nobody else; if the king have an imperial power, if the king be head of the Commonwealth, head of the body politic, if the body politic owe him obedience, truly I think it is an undenied consequence, he must needs be superior over them.

Gentlemen, This is no new thing to talk of an Emperor, or an Imperial Crown. Do not mistake me all this while: It is one thing to have an Imperial Crown, and another thing to govern absolutely.

Gentlemen, The Imperial Crown is a word that is significant; you shall find in all Statutes 1 Eliz. and the first of king James, nay, even in the act of judicial proceedings of this parliament it is called an Imperial Crown. They that take the oaths of allegiance and supremacy, they swear, that they will, to their power, assist and defend all jurisdictions, privileges, pre-eminences, and authorities, granted or belonging to the king, his heirs, and successors, or annexed to the Imperial Crown of this realm. What is an Imperial Crown? It is that, which, as to the coercive part, is subject to no man under God. The king of Poland has a crown; but what is it? At his Coronation it is conditioned with the people, That if he shall not govern them according to such Rules, they shall be freed from their homage and allegiance; but the crown of England is, and always was, an Imperial Crown, and so sworn.

Gentlemen, As I told you, even now, the Imperial Crown is a word significant; that crown, which, as to the coercive part, is not subject to any human tribunal, or judicature, whatsoever. And truly that this is such an Imperial Crown, though I have cited authorities ancient enough, you may find them much more ancient. I remember in the story of William Rufus (you shall find it in Matthew Paris and Eadmerus) some question was about

\* See Vol. 4, vol. 1, p. 23, and No. 85, vol. 2, p. 559, of this Collection.

Investiture of Bishops, and the like, the king writes his letter, 'That,' &c.

God forbid I should intend any absolute government by this. It is one thing to have an Absolute Monarchy, another thing to have that government absolutely without laws, as to any coercive power over the person of the king; for as to things or actions, they will fall under another consideration, as I will tell you by and by.

Gentlemen, since this is so, consider the Oath of Supremacy which most men have taken or should take. All men that enter into the Parliament House, they are expressly enjoined by statute to take the oath of supremacy. What says that oath? We swear that 'the king is the only supreme governor within this realm and dominions.' He is supreme, and the only supreme; and truly if he be supreme, there is neither major nor superior. I urge this the more, lest any person, by any misconstruction or inference which they might make from something that hath been acted by the higher powers, they might draw some dangerous inferences or consequences to colour or shadow over those murderous and traitorous acts, which afterwards they committed. They had no authority: but as I told you, though I do set forth this, and declare this to you, to let you know that the king was immediately subject to God, and so was not punishable by any person: yet let me tell you there is that excellent temperament in our laws, that for all this the king cannot rule but by his laws. It preserves the king, and his person, and the people's rights.

There are three things touching which the law is conversant, *personæ, res, et actiones*; persons, things, and actions. For the Person of the King, he is the Supreme Head, he is not punishable by any coercive power: the laws provide for that. 'The King can do no wrong;' it is a rule of law, it is in our law books very frequent; 22d Edw. 4. Lord Coke, and many others. If he can do no wrong, he cannot be punished for any wrong. The king, he hath the infirmities and weakness of a man; but he cannot do any injury, at least not considerable, in person; he must do it, by ministers, agents, instruments. Now the law, though it provide for the king, yet if any of his ministers do wrong, though by his command, they are punishable. The king cannot arrest a man, as he cannot be arrested himself; but if he arrest me by another man, I have remedy against this man, though not against the king; and so he cannot take away my estate. This as to the Person of the king: he is not to be touched, 'Touch not mine Anointed.'

I come to Things. If the king claim a right, the king must sue according to his laws; the king is subject to the laws in that case, his possessions shall be tried by juries. If he will try a man for his father's death, you see he will try them by the laws. The law is the rule and square of his actions, and by which he himself is judged.

Then for Actions, that is, such Actions

whereby rights and titles are prosecuted or recovered; the king cannot judge in person between man and man, he does it by his Judges, and upon oath; and so in all cases whatsoever, if the king will have his right, it must be brought before his judges. Though this is an Absolute Monarchy, yet this is so far from infringing the people's rights, that the people, as to their properties, liberties, and lives, have as great a privilege as the king. It is not the sharing of government that is for the liberty and benefit of the people; but it is how they may have their lives, and liberties, and estates, safely secured under government. And you know, when the fatness of the olive was laid aside, and we were governed by brambles, these brambles they did not only tear the skin, but tore the flesh to the very bone.

Gentlemen, I have done in this particular, to let you see that the Supreme Power being in the king, the king is immediately under God, owing his power to none but God. It is true (blessed be God) we have as great liberties as any people have in Christendom, in the world; but let us own them where they are due; we have them by the concessions of our princes. Our princes have granted them; and the king, now; he in them hath granted them likewise.

Gentlemen, I have been a little too long in this, and yet I cannot say it is too long, because it may clear our understanding, so many poisonous opinions having gone abroad. To come a little nearer: if we consider; suppose there were the highest authority; but when we shall consider this horrid murder (truly I cannot almost speak of it, but 'Vox faucibus hæret') When we shall consider, that a few members of the House of Commons, those that had taken the Oath of Supremacy, and those that had taken the Oath of Allegiance, that was to defend the king, and his heirs, against all conspiracies and attempts whatsoever, against his and their person, their crowns, and dignities; not only against the Pope's Sentence, as some would pretend, but, as otherwise, against all attempts and conspiracies, not only against his person, crown and royal dignity, nor Pope's sentence, not only in order to the profession of religion: but absolutely or otherwise, that is, whatsoever attempts, by any power, authority or pretence whatsoever: I say, when a few members of the House of Commons, not an eighth part of them, having taken these oaths, shall assume upon themselves an authority; an authority, what to do? Shall assume to themselves an authority to make laws, which was never heard before; authority to make laws? What laws? A law for an High Court of Justice, a law for lives, to sentence men's lives; and whose life? The life of their sovereign: upon such a king, who, as to them, had not only redressed long before, at the beginning of the Parliament, all Grievances that were, and were imaginable; taken away the Star-Chamber, High Commission-Court, and about Shipping; such a king, and after such concessions that he had made in the Isle of

Wight; when he had granted so much, that was more than the people would have desired: when these few Commons, not only without, but excluding the rest of the Commons; not only without, and excluding the rest, but rejecting the Lords too, that then sat: when these few Commons shall take upon them this authority, and by colour of this, their king, sovereign liege lord, shall be sentenced, put to death; and that put to death, even as their king, and sentenced as their king; put to death as their king, and thus before his own door, even before that place where he used in Royal Majesty to hear ambassadors, to have his honourable entertainments; that this king shall be thus put to death at noon-day, it is such an aggravation of villany, that truly I cannot tell what to say. No story, that ever was, I do not think any romance, any fabulous tragedy, can produce the like. Gentlemen, if any person shall now come, and shroud himself under this pretended authority, or such a pretended authority, you must know, that this is so far from an excuse, that it is an height of aggravation. The Court for Common Pleas is the common shop for Justice, in that Court an appeal is brought for murder, which ought to have been in the King's Bench, the Court gives judgment, the party is condemned, and executed: in this case it is murder in them that executed, because they had no lawful authority. I speak this to you, to shew you, that no man can shroud himself by colour of any such false or pretended authority. I have but one thing more to add to you upon this head, and that is (which I should have said at first), If two or more do compass or imagine the king's death; if some of them go on so far as to consultation; if others of them go further, they sentence, and execute, put to death: in this case they are all guilty; the first conclusion was treason. I have no more to add, but one particular, a few words.

As you will have Bills presented against those for compassing, imagining, adjudging the king, so possibly you may have bills presented against some of those for levying war against the king: levying of war, which is another branch of the Statute of the 25th Edw. 3. It was but declarative of the common law; it was no new law. By that law it was treason to levy war against the king. But to levy war against the king's authority, you must know, is treason too. If men will take up arms upon any public pretence; if it be to expulse aliens; if but to pull out privy-counsellors; if it be but against any particular laws, to reform religion, to pull down Enclosures.\* In all these cases, if persons have assembled themselves in a warlike manner to do any of these acts, this is treason, and within that branch of levying war against the king.

\* The ground on which this has been held to be High Treason, requires that the design or object, be the pulling down of all Enclosures.

(Croke Car. 588.) This was adjudged in the late king's time in Benstead's Case, queen Elizabeth's, Henry the 8th's, former times, king James's time; much more, if men will go not only to levy war against the king, but against the laws, all the laws, subvert all the laws, to set up new laws, models of their own. If any of these cases come to be presented to you, you know what the laws are. To conclude; you are now to enquire of blood, of royal blood, of sacred blood, blood like that of the Saints under the Altar, crying, *Quousque, Domine*, 'How long, Lord,' &c. This blood cries for vengeance, and it will not be appeased without a bloody sacrifice.

Remember but this and I have done: I shall not press you upon your oaths; you are persons of honour; you all know the obligation of an oath. This I will say, that he that conceals or favours the guilt of blood, takes it upon himself, wilfully, knowingly, takes it upon himself; and we know that when the Jews said, 'Let his blood be on us and our seed,' it continued unto them and their posterity to this day.

God save the King. Amen, Amen.

His Lordship's Speech being ended, there was presented to the grand jury a Bill of Indictment of High Treason against the following persons:

- |                      |                        |
|----------------------|------------------------|
| 1 Sir Hadr. Waller.  | 17 Gilbert Millington. |
| 2 Geo. Fleetwood.    | 18 Rob. Tichborne.     |
| 3 Tho. Harrison.     | 19 Owen Roe.           |
| 4 Adrian Scroop.     | 20 Rob. Lilburne.      |
| 5 John Carew.        | 21 Hen. Smith.         |
| 6 Tho. Scot.         | 22 John Downes.        |
| 7 Gregory Clement.   | 23 Vincent Potter.     |
| 8 John Jones.        | 24 Aug. Garland.       |
| 9 John Cook.         | 25 Simon Meyn.         |
| 10 Hugh Peters.      | 26 James Temple.       |
| 11 Dan. Axtell.      | 27 Peter Temple.       |
| 12 Francis Hackers   | 28 Tho. Waite.         |
| 13 Will. Hulet.*     | 29 W. Heveningham.     |
| 14 Edm. Harvey.      | 30 John Barkstead.†    |
| 15 Isaac Pennington. | 31 John Okey.†         |
| 16 Henry Martin.     | 32 Miles Corbet.†      |

After which Thomas Lee of the Middle Temple, London, gentleman, was called to give in the names of his Witnesses. The names of the Witnesses then and there sworn follow:

W. Clark, esq. Mr. Geo. Masterton,  
James Nutley, esq. Clerk.

\* His Indictment was not found till the 12th.

† "These three were fled, but being outlawed, were afterwards taken in Holland, and though they pleaded they were not the same persons who were outlawed, yet they were immediately tried (Pasche 14 Car. 2.); and being found the same persons, received sentence of death, and were executed accordingly." Keling. 13. 2 Sid. 72. 1 Lev. 61. 1 Keb. 244.

Geo. Farrington.  
 Heroules Huncks.  
 Dr. W. King.  
 Martin Foster.  
 John Baker.  
 Stephen Kirk.  
 Rich. Nunnely.  
 John Powel.  
 John Throckmorton.  
 John Blackwel.  
 Ralph Hardwick.  
 Tho. Walkley, gent.  
 Holland Simpson.  
 Ben. Francis.  
 Col. Mat. Thomlinson.  
 Mr. Lee.  
 Rob. Ewer.  
 John King.  
 Griffith Bodurdo, esq.  
 Sum. Boardman.

Rob. Carr, esq.  
 Rich. Young.  
 Sir<sup>r</sup> Purbeck Temp'le.  
 John Rushworth.  
 John Gerrard.  
 John Hearn.  
 Mr. Coitmore.  
 Mr. Cunningham.  
 Mr. Clench.  
 W. Jessop, esq.  
 Edw. Austin.  
 Edw. Darnel, esq.  
 Mr. Brown.  
 Tho. Tongue.  
 John Bowler.  
 Mr. Sharp.  
 Edw. Folley.  
 Mr. Gouge.  
 Ant. Mildmay, esq.

The Grand Jury returned the Indictment *Billa Vera*. Court adjourned to the Old Bailey 10th of October.

October, 1660.

Sir John Robinson, knight, lieutenant of his Majesty's Tower of London, according to his Warrant received, delivered to Mr. Sheriff the Prisoners hereafter named, who were (in several coaches) with a strong guard of horse and foot conveyed to Newgate, and about nine of the clock in the morning delivered to the keepers of that prison, and thence brought to the Sessions House in the Old Bailey, London, where the Commissioners of Oyer and Terminer were in court assembled, and where their Indictment was publicly read by Edward Shelton, esq.; clerk of the crown.

Sessions House in the Old Bailey, October 10, 1660.

The Court being assembled, and silence commanded, the Commission of Oyer and Terminer was again read. After which Sir Hardress Waller, Colonel Thomas Harrison, and Mr. William Heveningham, were brought to the bar,\* and commanded to hold up their

\* "All things being prepared, and the court assembled at the Sessions-house in the Old Bailey, sir Hardress Waller, maj.-gen. Harrison, and Mr. Heveningham, were ordered to be set to the bar; where the indictment being read, containing many strange expressions, it was contrived, that sir Hardress Waller, who was known to be a man that would say any thing to save his life, and was prepared to that purpose, should be first demanded whether he were Guilty, or Not Guilty. Which being done, he, after a little shifting, according to the expectation of the bench, pleaded Guilty; asking the blood which had been shed during his employment in the army upon his own head. But when maj.-gen. Harrison was required to answer, he not only pleaded Not guilty, but justified the sentence passed upon the king, and the authority of those who had

hands; which sir Hardress Waller and Mr. Heveningham did; but Harrison being commanded to hold up his hand, answered, 'I am here,' and said, 'my lord, if you please I will speak a word'—

*Court.* Hold up your hand, and you shall be heard in due time. Mr. Harrison, the course is, that you must hold up your hand first.—And then he held up his hand.

The Indictment was read, purporting, 'That he, together with others, not having the fear of God before his eyes, and being instigated by the devil, did maliciously, traitorously, and feloniously, contrary to his due allegiance and bounden duty, sit upon and condemn our late sovereign lord, king Charles the first,

commissionated him to act as one of his judges. He plainly told them, when witnesses were produced against him, that he came not thither with an intention to deny any thing he had done, but rather to bring it to light; owning his name subscribed to the warrant for executing the king, to be written by himself; charging divers of those who sat on the bench, as his judges, to have been formerly as active for the cause in which he had engaged, as himself or any other person; affirming, that he had not acted by any other motive than the principles of conscience and justice: for proof of which he said it was well known, he had chosen to be separated from his family, and to suffer a long imprisonment, rather than to comply with those who had abused the power they had assumed to the oppression of the people. He insisted, that having done nothing in relation to the matter in question, otherwise than by the authority of the parliament, he was not justly accountable, either to this or any other inferior court; which being a point of law, he desired to have counsel assigned upon that head. But the court over-ruled; and by interrupting him frequently, and not permitting him to go on in his defence, they clearly manifested a resolution of gratifying the resentments of the court upon any terms. So that a hasty verdict was brought in against him. And the question being asked, If he had any thing to say why judgment should not pass? he only said, That, since the court had refused to hear what was fit for him to speak in his defence, he had no more to say. Upon which Bridgman pronounced the sentence. And, that the inhumanity of these men may the better appear, I must not omit, that the executioner, in an ugly dress, with a halter in his hand, was placed near the major-general, and continued there during the whole time of his trial. Which action I doubt whether it was ever equalled by the most barbarous nations. But having learned to contemn such baseness, after the sentence had been pronounced against him, he said aloud, as he was withdrawing from the court, That he had no reason to be ashamed of the cause in which he had been engaged. This sentence was so barbarously executed, that he was cut down alive, and saw his bowels thrown into the fire." 3 Ludlow, 50.

'of ever-blessed memory; and also did upon the 30th of January, 1649, sign and seal a Warrant for the execution of his late sacred and serene Majesty, of blessed memory. Where also,' &c.

*Clerk of the Crown.* How savest thou, sir Hardess Waller? Art thou Guilty of that Treason whereof thou standest indicted, and for which thou hast now been arraigned, or Not Guilty?

*Sir H. Waller.* My lords, I dare not say, Not Guilty; but since that in a business of this nature we have no counsel or advice, and being not able to speak to matter of law—

*Lord Chief Baron.* I am loth to interrupt you; but this is the course: you have heard the indictment read, and the course is, you must plead Guilty or Not Guilty. There is no medium, Guilty or Not Guilty. It is that which is the law, and the case of all men. Are you Guilty? Or Not Guilty?

*Sir H. Waller.* I may confess myself Guilty of some particulars in that Indictment, but not of all; for so, instead of discharging, I shall wound my conscience.

*Clerk.* Are you Guilty, or Not Guilty?

*Sir H. Waller.* If I might have that liberty to—

*Court.* You shall have that liberty that any subject of the nation can have or can challenge. No man, standing at the bar in that condition you are, must make any other answer to that Indictment than Guilty, or Not Guilty. It is the common case of all men. Your confession must be plain and direct, either Guilty or Not Guilty.

\* *Sir H. Waller.* My lord, I desire some time to consider of it, for it is a great surprisal.

*Court.* You have had time enough to consider of it; you must follow the directions of the Court, Guilty or Not Guilty? You must not thus discourse of being surprized; for these discourses are contrary to all proceedings of this nature.

*Clerk.* How say you, sir H. Waller? Are you Guilty or Not Guilty?

*Sir H. Waller.* I dare not say, Not Guilty.

*Clerk.* Will you confess, then?

*Sir H. Waller.* I would be glad to be understood—

*Court.* Your plea must be direct, Guilty, or Not Guilty.

*Sir H. Waller.* Shall I be heard, my lord?

*Court.* Yes, upon your trial. There is but two ways, plead Not Guilty, or confess it. Sir H. Waller, we would not have you to be deceived. If you confess, and say, you are Guilty, there is nothing then but Judgment: If you say Not Guilty, then you shall be heard with your evidence. Consider with yourself. Plead Not Guilty, or confess, and say, you are Guilty.

*Sir H. Waller.* My lord, it puts me upon a great contest with myself. I shall be very free to open my heart.

*Court.* Sir, you must plead Guilty, or Not Guilty.

*Sir H. Waller.* My lord, my condition differs from others, I am a stranger; I have been thirty years transplanted into Ireland, which has made me unacquainted with the affairs of the law here.

*Court.* You must keep to the course of the law, either Guilty or Not Guilty. There is but one of these two pleas to be made.

*Sir H. Waller.* I dare not say Not Guilty.

*Court.* There are but these three things to be considered: Either you must say Guilty, which is confession, and then there remains no more but Judgment; or Not Guilty, and then you shall be heard; or Judgment will pass for your standing mute, which is all one if you had confessed.

*Sir H. Waller.* Inasmuch as I said I dare not say Not Guilty, I must say Guilty.

*Clerk.* You say you are Guilty? You confess the Indictment.

*Sir H. Waller.\** Yes.

*Clerk.* THOMAS HARRISON, How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Harrison.* My lords, have I liberty to speak?

*Court.* No more (at this time) than Guilty or Not Guilty. Mr. Harrison, you have heard the direction before.—We can give you but the same rule. If you plead Not Guilty, you shall be heard at large; if Guilty, you know what remains.

*Harrison.* Will you give me leave to give you my answer in my own words?

*L. C. Bar.* There is no answer but what the law directs; it is the same with you as with all others, or as I would desire, if I were in your condition. You must plead Not Guilty, or, if you confess Guilty, there must be Judgment upon your confession. The same rule for one must be for another.

*Harrison.* You express your rule very fair, as well to me as this gentleman (pointing at sir H. Waller); but I have something to say to your lordships, which concerns your lordships as well as myself.

*Court.* You must hold, and plead Guilty, or Not Guilty. If you go otherwise (as I told you before), it will be as if you pleaded not at all, and then Judgment will pass against you. The law gives the words, frames your answer, it is none else but the law, Guilty, or Not Guilty?

*Harrison.* My lord, I have been kept close prisoner near these three months, that no body might have access to me. Do you call me to give you a legal answer, not knowing of my trial till nine of the clock last night, and brought away from the Tower, to this place, at six of the clock this morn'g?

*Court.* You must give your direct answer, Guilty, or Not Guilty. You cannot say it is

\* "He had at first pleaded Not Guilty, but was allowed by the Court to withdraw his plea," Kelyng, 11.

sudden, or unprovided. You spend time in vain. You trouble the Court. You must plead Guilty, or Not Guilty. We must not suffer you to make discourses here. You must plead either Guilty, or Not Guilty.

*Clerk.* Are you Guilty, or Not Guilty?

*Harrison.* I am speaking. Shall I not speak two words?

*Court.* If you will not put yourself upon your trial, you must expect that course that the law directs.

*Harrison.* May it please your lordships, I am now——

*Clerk.* Are you Guilty, or Not Guilty?

*Harrison.* I desire to be advised by the law, this is a special case.

*Court.* The law allows nothing now, but to plead Guilty, or Not Guilty.

*Court.* You must plead to your Indictment. If it be Treason, it cannot be justified; if it be justifiable, it is not Treason; therefore plead Guilty, or Not Guilty.

*Harrison.* Give me advice in this——

*Clerk.* Tho. Harrison, Are you Guilty? Or Not Guilty?

*Harrison.* I would willingly render an account of all my doings——

*Clerk.* Are you Guilty or? Or Not Guilty?

*Court.* You have been acquainted with the legal proceedings. You never found in all your experience that any prisoner at the bar, for Felony or Treason, was suffered thus to discourse, or to answer otherwise than Guilty, or Not Guilty?

*Clerk.* Are you Guilty? or Not Guilty?

*Mr. Sol. Gen.* I do beseech your lordships he may plead; peradventure he knows his case so well, that he thinks it as cheap to defy the Court, as submit to it.

*Court.* We must enter your standing mute; that is Judgment.

*Clerk.* Are you Guilty, or Not Guilty?

*Harrison.* Will you refuse to give me any satisfaction?

*Court.* Are you Guilty, or Not Guilty?

*Harrison.* Will you give me your advice?

*Court.* We do give you advice. The advice is, there is no other plea, but Guilty, or Not Guilty. You shall be heard when you have put yourself upon your trial.

*Clerk.* Are you Guilty, or Not Guilty?

*Harrison.* You do deny me counsel, then I do plead Not Guilty.

*Clerk.* You plead Not Guilty? Is this your Plea?

*Harrison.* Yes.

*Clerk.* How will you be tried?

*Harrison.* I will be tried according to the laws of the Lord.

*Clerk.* Whether by God and the Country?

*J. C. Bar.* Now I must tell you, if you do not put yourself upon your Country, you have said nothing.

*Clerk.* How will you be tried?

*Harrison.* It is to put myself upon what you please to put me upon.

*Court.* If you understand (you are not every man, you are versed in proceedings of law), you know you must put yourself upon the trial of God and your Country; if you do not, it is as good as if you had said nothing.

*Harrison.* You have been misinformed of me——

*Court.* You have pleaded Not Guilty; that which remains is, that you must be tried by God and the Country, otherwise we must record your standing mute.

*Clerk.* How will you be tried?

*Harrison.* I will be tried according to the ordinary course.

*Clerk.* Whether by God and the Country? you must speak the words.

*Harrison.* They are vain words,——

*Court.* We have given you a great deal of liberty and scope, which is not usual. It is the course and proceedings of law, if you will be tried, you must put yourself upon God and the Country.

*Clerk.* How will you be tried?

*Harrison.* I do offer myself to be tried in your own way, by God and my Country.

*Clerk.* God send you a good deliverance.

*Clerk.* WILLIAM HEVENINGHAM, hold up your hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? or Not Guilty?

*Heveningham.* Not Guilty.

*Clerk.* How will you be tried?

*Heveningham.* By God and the Country.

*Clerk.* God send you a good deliverance.

Sir HARRISS WAILER then presented his Petition to the Court, directed "To the King's Majesty and the Parliament," which was received, but not at this Court read; and then the three persons aforesaid were dismissed.

*Clerk.* Bring to the bar Isaac Pennington, esq.; Henry Martin, esq.; Gilbert Millington, gentleman; Robert Tichburne, esq.; Owen Roe, esq.; and Robert Lilburn, gentleman; who were called, and appeared at the bar, and being commanded severally, held up their hands.

The Indictment was read again as to the former persons.

*Clerk.* ISAAC PENNINGTON, hold up thy hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? or Not Guilty?

*Pennington.* Not Guilty, my lord.

*Clerk.* How will you be tried?

*Pennington.* By God and the Country.

*Clerk.* God send you a good deliverance.

*Clerk.* HENRY MARTEN, how sayest thou? Art thou Guilty of the Treason whereof thou

standest indicted, and art now arraigned? or Not Guilty?

*Marten.* I desire the benefit of the Act of Oblivion—

*Clerk.* Are you Guilty, or Not Guilty.

*Court.* You are to understand the law is thus, the same to you and every one; you are to plead Guilty, or Not Guilty. If you will demand the Benefit of the Act of Oblivion, it is a confession of being Guilty.

*Marten.* I humbly conceive the Act of Indemnity—

*Court.* You must plead Guilty, or Not Guilty

*Marten.* If I plead, I lose the benefit of that Act.

*Court.* You are totally excepted out of the Act.

*Marten.* If it were so, I would plead. My name is not in that Act.

*Court.* Henry Martin is there.

*Mr Solicitor General.* Surely he hath been kept close prisoner indeed, if he hath not seen the Act of Indemnity. Shew it him.

*Mr Shelton opening the Act.*

*Court.* How is it written?

*Clerk.* It is Henry Martin.

And then the Act was shewed to the said Mr Marten

*Marten.* Henry Martin. My name is not so\*, it is Harry Marten

*Court.* The difference of the sound is very little. You are known by that name of Martin

*Marten.* I humbly conceive all Penal Statutes ought to be understood literally

*Clerk.* Are you Guilty? or Not Guilty?

*Marten.* I am not Henry Martin

*Clerk.* Are you Guilty? or Not Guilty?

*Court.* Be advised, the effect of this plea will be judgment

Here Mr Solicitor General cited somewhat parallel to this in a case formerly of Baxter, where the name was Bagster, with an S, and adjudged all one, being of the same sound

*Clerk.* Are you Guilty? or Not Guilty?

*Marten.* My lord, I desire counsel, there will arise matter of law, as well as fact

*Court.* You are indicted for Treason, for a malicious, traitorous compassing and imagining the King's death, if you have any thing of justification, plead Not Guilty, and you shall be heard, for if it be justifiable it is not Treason. The rule is, either you must plead Guilty, and so confess, or Not Guilty, and put yourself upon your trial; there is no medium

*Marten.* May I give any thing in evidence before Verdict.

*Court.* Yes; upon your trial you may give

\* "Memorandum, That upon the arraignment of Henry Martyn, his name being so written in the indictment, he said his name was Marten, and not Martyn; but the Court agreed that he being known by that name of Martyn, that was well enough in an indictment, though it be not spelled duely as he spell-eth it." Kelyng, 11.

any thing in evidence that the law warrants to be lawful evidence

*Clerk.* Are you Guilty? or Not Guilty?

*Court.* Understand one thing, because I would not have you mistaken; you cannot give in evidence the unsuinner, but any thing to the matter of fact.

*Marten.* I submit and plead Not Guilty.

*Clerk.* How will you be tried?

*Marten.* By God and the Country.

*Clerk.* God send you a good deliverance.

*Clerk.* GILBERT MILLINGTON, hold up your hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? or not Guilty?

*Millington.* My lord, I am an ancient man, and deaf; I humbly crave your lordship's pardon to hear me a few words; I will promise it shall be *pertinent* enough.

*Mr. Solicitor General.* *Impertinent* enough, he means.

*Court.* You must plead either Guilty, and so confess it; or Not Guilty, and then you shall be heard any thing for your justification.

*Clerk.* Are you Guilty? or Not Guilty?

*Millington.* I desire I may—

*Court.* There is nothing you can say but Guilty, or Not Guilty; all other discourses turn upon yourself.

*Clerk.* Are you Guilty? or Not Guilty?

*Millington.* You might enlighten me in some scruples. Does my pause trouble you much? I should not be long.

*Court.* Your particular case cannot differ from others.

*Clerk.* Are you Guilty? Or Not Guilty?

*Millington.* There are some things in the Indictment that I can say Not Guilty to; there are others that I must deal ingenuously, and confess them.

*Clerk.* Are you Guilty in manner and form as you are indicted? Or Not Guilty?

*Millington.* Not Guilty.

*Clerk.* How will you be tried?

*Millington.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* ROBERT TICHBOURN, hold up your hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Tichbourn.* My lord, I have been a very close prisoner, without any advice; I am altogether unblew law to speak.

*Court.* You know the course hath been delivered to you by others, I will not trouble you with it. It is neither long nor short; the law requires your answer, Guilty? Or Not Guilty?

*Tichbourn.* Spare me but one word. If upon the trial there shall appear to be matter of law, shall I have the liberty of counsel for it? If I shall be put in my own case to plead matter of law against those noble persons who

plead on the other part, I shall but prejudice myself, and therefore I crave counsel.

*Court.* You must plead Guilty, or Not Guilty.

*Tichbourn.* I have no reason nor design to displease you. I am sure I am no ways able to plead with equalness in point of law with those noble gentlemen. To the matter of fact this is my plea, In manner and form that I stand indicted I am Not Guilty.

*Clerk.* How will you be tried?

*Tichbourn.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* OWEN ROWE, Hold up your hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Rowe.* My lord, there hath been so much said already by others, I think I need say no more. In manner and form as I am now indicted I plead Not Guilty.

*Clerk.* How will you be tried?

*Rowe.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* ROBERT LILBURNE, Hold up your hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Lilburne.* I desire, in regard that being so close a prisoner for twenty days, that nobody has been suffered to advise with me—

*L. C. Baron.* I must interrupt you. You must not mis-spend the time. Understand the law. You must plead Guilty, or Not Guilty.

*Lilburne.* Will you give me leave to desire counsel before I plead, to advise me touching my plea?

*Clerk.* Are you Guilty or Not Guilty?

*Lilburne.* I desire counsel—

*Court.* Take heed, if that be your answer, 'You desire counsel,' and do not plead, and that be recorded, Judgment will pass against you. There is nothing to plead, but Guilty, or Not Guilty. If Not Guilty, what you have to say will be heard.

*Lilburne.* If you over-rule me, I must submit.

*Court.* Do not let such language fall from you; it is improper. The law gives us a rule. The prisoner must plead Guilty, or Not Guilty.

*Lilburne.* I say then, In manner and form as I am indicted I am Not Guilty.

*Clerk.* How will you be tried?

*Lilburne.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* Bring to the bar Adrian Scroop, John Carew, John Jones, Thomas Scot, Gregory Clement, and John Cook.

Who were brought accordingly, and being commanded, severally held up their hands at the bar. The Indictment was read to the persons at the bar as before.

*Clerk.* ADRIAN SCROOP, Hold up thy hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Scroop.* My lord, Not Guilty.

*Clerk.* How will you be tried?

*Scroop.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* JOHN CAREW, Hold up thy hand. How sayest thou? Art thou Guilty of the Treason whereof thou art indicted and art now arraigned? Or Not Guilty?

*Carew.* There is some special matter in that Indictment, that ought not to before—

*Clerk.* Are you Guilty, or Not Guilty?

*Carew.* Saving to our Lord Jesus Christ his right to the government of these kingdoms—

*Court.* Are you Guilty, or Not Guilty?

*Carew.* I say I am Not Guilty.

*Clerk.* How will you be tried?

*Carew.* How would you have me.

*Clerk.* Will you be tried by God and the country?

*Carew.* Aye, if you will.

*Clerk.* You must say the words. How will you be tried?

*Carew.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* JOHN JONES, Hold up thy hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Jones.* Not Guilty, my lord.

*Clerk.* How will you be tried?

*Jones.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* THOMAS SCOT, Hold up thy hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Scot.* Truly I cannot call it Treason, and therefore I plead Not Guilty.

*Clerk.* How will you be tried?

*Scot.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* GREGORY CLEMENT, Hold up your hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Clement.* My lord, I cannot excuse myself in many particulars; but as to my Indictment, as there it is, I plead Not Guilty.

*Clerk.* How will you be tried?

*Clement.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* JOHN COOK, hold up thy hand.



How sayest thou? Art thou Guilty of the treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Cook.* I humbly conceive that this is now time to move for counsel for matter of law—

*Court.* You know too well the manner of the court. Are you Guilty? Or not Guilty?

*Cook.* Not Guilty.

*Clerk.* How will you be tried?

*Cook.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* Bring Edmund Harvey, Henry Smith, John Downs, Vincent Potter, and Augustine Garland, to the bar. Who were brought accordingly, and, being commanded, severally held up their hands. The Indictment was read to them.

*Clerk.* EDMUND HARVEY, hold up your hand. How sayest thou? Art thou Guilty of the treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Harvey.* Not Guilty, my lord.

*Clerk.* How will you be tried?

*Harvey.* By God and the country.

*Clerk.* God send you a good deliverance.

*Clerk.* HENRY SMITH, hold up thy hand? How sayest thou? Art thou Guilty of the Treason whereof thou art indicted, and for which thou art now arraigned? Or Not Guilty?

*Smith.* Not Guilty, my Lord.

*Clerk.* How will you be tried?

*Smith.* By God and the country.

*Clerk.* God send you a good deliverance.

John Downs, Vincent Potter, Augustine Garland, upon the question presently pleaded Not Guilty, and put themselves on God and the country to be tried.

*Clerk.* Set to the bar George Fleetwood, Simon Myn, James Temple, Peter Temple, Thomas Wait, Hugh Peters, Francis Hacker, and Daniel Axtell. Who being at the bar, held up their hands according to order; afterward the Clerk read the Indictment against the said persons; which being ended, he proceeded in this manner:

*Clerk.* GEORGE FLEETWOOD, hold up thy hand. What sayest thou? Art thou Guilty of this horrid treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Fleetwood.* My lord, I came in upon his majesty's Proclamation.

*Clerk.* Art thou Guilty? Or Not Guilty?

*Fleetwood.\** I must confess I am Guilty, (and thereupon he delivered a Petition into the Court, which he said was directed "To his majesty and the parliament," and the Court did receive it accordingly).

*Clerk.* Set him aside.

*Clerk.* SIMON MEYN, hold up thy hand. What sayest thou? Art thou Guilty of this horrid treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Meyn.* Not Guilty. I came in upon his Majesty's Proclamation, my Lord.

*Clerk.* How wilt thou be tried?

*Meyn.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* JAMES TEMPLE, hold up thy hand. What sayest thou? Art thou Guilty of this horrid treason whereof thou standest indicted, and art now arraigned? Or Not Guilty?

*Temple.* Not Guilty.

*Clerk.* How wilt thou be tried.

*Temple.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* PETER TEMPLE, hold up your hand. How sayest thou? Art thou Guilty of the treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Temple.* Not Guilty.

*Clerk.* How wilt thou be tried?

*Temple.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* THOMAS WAIT, hold up your hand. How sayest thou? Art thou Guilty of the treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Wait.* I desire to be heard a word or two—

*Court.* There is a rule of law which is set to us and you, that in all these cases you are to plead Guilty, or Not Guilty. When you have pleaded, if Not Guilty, you may speak what you will in its proper time.

*Clerk.* Are you Guilty, or Not Guilty?

*Wait.* I pray let me be heard a word. I am very unwilling to spend time, knowing you have a great deal of business. I am very unwilling to deprive myself of my native right. I shall speak nothing but that which is truth.

*Court.* Do not preface then, but speak what you would say.

*Wait.* My lord, my case is different from the rest.

*Court.* Whatsoever the case be, you have no plea to us, but Guilty, or Not Guilty. We can go no other way. The law sets out your Plea.

*Wait.* My lord, I would speak one word. There was a great peer of this nation indicted at Northampton, within these two years, for killing a man. The judges there—

*Court.* You must plead Guilty, or Not Guilty. Pray who are you that should take this upon you more than all the rest? You must go the ordinary way; Guilty, or Not Guilty: are you Guilty? or Not Guilty? We do not intend to prevent any thing you have to say, but it must be proper.

\* "He had first pleaded Not Guilty, but was permitted to withdraw his Plea." Kelyng. 11.

*Clerk.* Are you Guilty? Or Not Guilty?

*Wait.* I cannot say I am Guilty.

*Court.* How then?—*Wait.* I am Not Guilty.

*Clerk.* How wilt thou be tried?

*Wait.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* HUGH PETERS, hold up thy hand. How sayest thou? Art thou Guilty of the treason whereof thou standest indicted, and for which thou art now arraigned? Or Not Guilty?

*Hugh Peters.* I would not for Ten Thousand Worlds say I am Guilty. I am Not Guilty.

*Clerk.* How will you be tried?

*Hugh Peters.* By the Word of God. [Here the people laughed.]

*Court.* You must say, By God and the country. Tell him, you that stand by him, what he should say, if he doth not know.

*Clerk.* How will you be tried?

*Hugh Peters.* By God and the country.

*Clerk.* God send thee a good deliverance.

*Clerk.* DANIEL AXTEL, hold up thy hand. What sayest thou? Art thou Guilty of the treason whereof thou standest indicted, and for which thou art now arraigned? Or not Guilty?

*Axtel.* May it please your lordships, I desire to have the freedom of an Englishman; that which is my right by law and inheritance: I have something to offer in point of law.

*Clerk.* Art thou Guilty? Or Not Guilty?

*Axtel.* My lords, give me leave to speak. For the matter of the Indictment I conceive is upon the king's death; that there is a Commission of Oyer and Terminer for you to sit: but in regard it was in pursuance of an act of parliament, I conceive no inferior court ought to judge of it: I desire counsel, it being of great and eminent concernment in law, that ever any judges, or any inferior court, should judge of the powers and privileges of a parliament; and I pray that counsel may be assigned me.

*Clerk.* Are you Guilty? Or Not Guilty?

*Axtel.* If the court over-rule me, and I shall not have my liberty, as an Englishman—

*Court.* The course of law is this: No man can justify treason. If the matter which you have to say be justifiable, it is not treason; if treason, it is not justifiable; therefore you must go the ordinary course of the law. You must plead Guilty, or Not Guilty.

*Axtel.* I can produce many precedents—

*Court.* Are you Guilty? Or Not Guilty? The language is put into your mouth. You have no other words to express yourself by at this time, but Guilty, or Not Guilty.

*Axtel.* Judge Heath had counsel assigned him upon the same case.

*Court.* That is very strange; the same case? What, was it for killing a king?

*Axtel.* If the Court will over-rule me, I cannot help it.

*Sol. Gen.* It may be, this gentleman may

be deceived by a mistake. It may be, he knows not the law, which your lordships may be pleased to acquaint him with: that to stand Mute in High-Treason is all one as to confess the fact, and will have the same sentence and condemnation upon them, as if they had confessed it.

*L. C. Baron.* Then I will tell you the law. He that doth refuse to put himself upon his legal trial of God and the country, is a mute in law; and therefore you must plead Guilty, or Not Guilty. Let his language be what it will, he is a mute in law.

*Axtel.* I do not refuse it.

*Court.* Then say.

*Axtel.* I am Not Guilty.

*Clerk.* How will you be tried?

*Axtel.* By twelve lawful men, according to the constitutions of the law.

*Court.* That is by God and the country.

*Axtel.* That is not lawful. God is not locally here.

*Clerk.* How wilt thou be tried? You must say, By God and the country,

*Axtel.* By God and the country.

*Clerk.* God send you a good deliverance.

*L. C. Baron.* Mr. Axtel, have you your Papers again?—*Axtel.* Yes, my lord.

*L. C. Baron.* When your Indictment is read the second time, when you come to your trial, you may take what notes you please.

The Court then adjourned to the same place till the next morning seven o'clock.

#### TRIAL OF THOMAS HARRISON.\*

October 11, 1660.

The Court being assembled, the Keeper was commanded to set the prisoners to the bar.

\* If we should believe Burnet's account of Harrison, "He was a fierce and bloody enthusiast. And it was believed, that, while the army was in doubt, whether it was fitter to kill the King privately, or to bring him to an open trial, that he offered, if a private way was settled on, to be the man that should do it. So he was begun with. But, however reasonable this might be in itself, it had a very ill effect: for he was a man of great heat and resolution, fixed in his principles, and so persuaded of them, that he never looked after any interests of his own, but had opposed Cromwell when he set up for himself. He went through all the indignities and severities of his execution, in which the letter of the law in cases of treason was punctually observed, with a calmness or rather a cheerfulness that astonished the spectators. He spoke very positively that what they had done was the cause and work of God, which he was confident God would own and raise up again, how much soever it suffered at that time. Upon this a report was spread, and generally believed, that he said, he himself should rise again. Though the party denied this, and reported the words as I have set them down."

Thomas Harrison, Adrian Scroop, John Carew, John Jones, Gregory Clement, Tho. Scot, were brought to the bar accordingly. After which silence was commanded.

*Court.* You that are the Prisoners at the Bar, if you, or any of you, desire pen, ink, and paper, you shall have it; and if you, or any of you, will challenge any of the Jury, you may when they come to be sworn, and that before they are sworn.

Sir Thomas Allen being called, was desired to look on the Prisoners, and lay his hand on the book: his Oath was then read to him, viz.

‘You shall well and truly try, and true deliverance make, between our sovereign lord the king and the prisoners at the bar, whom you shall have in charge, according to your evidence.

‘So help you God.’

Sir Joshua Ash being next called, Mr. Scroop excepted against him.

Sir Jeremy Whichcot, bart. being next to be sworn, Mr. Harrison excepted against him.

James Halley, esq. being next to be sworn, Mr. Scot excepted against him.

*Court.* If you will not agree (speaking to the Prisoners) in your challenges, we must be forced to try you severally.

Henry Mildmay, esq. being called next, Mr. Scroop excepted against him.

*Court.* We must needs try them severally, therefore set them all aside but Harrison.

*Court.* Gentlemen, you that are excepted must not depart the Court

Sir Joshua Ash being again called, was excepted against by Mr. Harrison.

Sir Jeremy Whichcot, bart. James Halley, Henry Mildmay, and Christopher Abdy, esqrs. being called again, were severally excepted against by the Prisoner.

*Court.* Mr. Harrison, you know the law. You must say, ‘I challenge him.’

*Harrison.* I shall, Sir.

Ralph Hartley being next called, and being very sick, humbly prayed to be excused by the Court, which was granted.

Arthur Newman was called next.

*Harrison.* May I not ask of what quality he is?

*Court.* No, Sir; you are to challenge him, or not to challenge him.

*Harrison.* I challenge him.

Thomas Blich was next called, and also challenged.

[Here the People seemed to laugh.]

*Harrison.* My Lord, I must make use of my liberty in this case.

*Court.* God forbid.

Then Grover, Robert Clark, and Richard Whalley, were called, and by Mr. Harrison challenged.

*Court.* Mr. Harrison, you know how many to challenge; if you go beyond the number, at your own peril be it.

*Harrison.* My Lord, pray tell me what it is.

VOL. V.

*Court.* You say very well; God forbid but you should know. You may challenge five-and-thirty *peremptorily*; if you go beyond, you know the danger.

*Harrison.* My lord, I do not this to keep you off from the business.

William Vincent and Henry Twisford were then called, and challenged.

John Lisle was next called.

*Harrison.* I do not know him.

*Lisle.* Nor I you, Mr. Harrison. He was sworn.

Thomas Franklin sworn.

Thomas Winter challenged.

Richard Nichol sworn.

Moyses being sick, prayed excuse, which was granted accordingly.

Richard Cheyney challenged.

Allen Parsons challenged.

Henry Edlin called.

*Harrison.* I challenge him.—Let him be sworn.

*Court.* No, no. (Whereupon he was set aside.)

*Harrison.* If I have any apprehension or knowledge of them, that is the thing that leads me to it, as touching this man, he may be sworn.

*Court.* When he is challenged he cannot be re-called.\*

*Harrison.* I am content.

Samuel Greenhil sworn.

Thomas Bede challenged.

John Page challenged.

Richard Rider challenged.

*Harrison.* Lest I may run into an hazard, in making use of that liberty which the law gives me in this case, and having not taken notice of any person challenged, I mean as to the number, I desire your officer that takes notice may acquaint me with the number.

*Court.* You shall know it; God forbid the contrary.

Edward Rolph was called next.

*Harrison.* Mr. Rolph is his name? Let him be sworn.

Francis Beal challenged.

John Kirk challenged.

Charles Pitfield challenged.

John Smith challenged.

— Bell sworn.

Edward Franklin challenged.

William Whitcomb challenged.

Samuel Harris sworn.

John Collins challenged.

Thomas Snow sworn.

William Blunt challenged.

George Righ challenged.

John Nichol of Finchley sworn.

Timothy Taylor challenged.

Thomas Fruin challenged.

Richard Abel challenged.

Thomas Morris sworn.

\* In the Case of Tonge and others for High Treason, (A. D. 1662, *infra*), such a revocation of a challenge seems to have been allowed.

Ambrose Scudamore challenged.

Ralph Hulsel challenged.

George Tirry challenged.

*Court.* You have challenged 33 already.

*Harrison.* I pray the names may be read to me, to see if it be so.

*Court.* When you come to 35 you shall have the names read.

John Galliard challenged.

Thomas Swallow challenged.

*Court.* Now read their names to him.

Which were read accordingly. In all 35 challenged.

George Pickering was next called and sworn.

Then they were called over who were admitted, viz. Sir Thomas Allen, John Lisle, Thomas Franklin, Richard Nichol, Samuel Greenhil, Edward Rolph, ——— Bell, Samuel Harris, Thomas Snow, John Nichol, Thomas Morris, George Pickering; and sworn.

Proclamation was then made: 'If any man can inform my lords, the king's Justices, the king's Serjeant, or the king's Attorney, before this inquest be taken, let them come forth and they shall be heard, for now the prisoner stands at the bar upon his deliverance. And all those bound by Recognizance to appear, let them come forth and give their evidence, or else to forfeit their recognizance.'

George Masterson, James Nutley, Robert Coytmore, Holland Simpson and Wm. Jessop, Witnesses, were called.

*Court.* Gentlemen, that are not of the Jury, pray clear the passage. The prisoner is here for life and death, let him have liberty to see the Jury.

*Clerk.* Thomas Harrison, hold up thy hand.

*Clerk.* Look upon the prisoner you that are sworn. You shall understand that the prisoner at the bar stands indicted by the name of Thomas Harrison, late of Westminster, in the county of Middlesex, gentleman, for that he, together with John Lisle, &c. [here the Indictment was read] upon which Indictment he hath been arraigned, and thereto hath pleaded Not Guilty, and for his trial hath put himself upon God and the Country, which Country you are. Now your Charge is to enquire, whether he be Guilty of the High-Treason in manner and form as he stands indicted, or Not Guilty. If you find that he is Guilty, you shall enquire what goods and chattels he had at the time of committing the said Treason, or any time thence. If you find that he is Not Guilty, you shall enquire whether he did fly for it; and if you find that he fled for it, you shall enquire of his goods and chattels, as if you had found him Guilty: If you find that he is Not Guilty, nor that he did fly, you shall say so, and no more. And take heed to your Evidence.

• Mr. Keeling enforced the Charge at large: After whom sir Hennege Finch, his majesty's Solicitor-General, in these words:

May it please your lordships, we bring before your lordships unto judgment this day the

Murderers of a King. A man would think the laws of God and men had so fully secured these sacred persons, that the sons of violence should never approach to hurt them; For, my lord, the very thought of such an attempt hath ever been presented by all laws, in all ages, in all nations of the world, as a most unpardonable Treason. My lord, this is that that brought the two eunuchs in the Persian court to their just destruction: *Voluerunt insurgere*, says the text, and yet that was enough to attain them. And so, my lords, it was by the Roman laws too, as Tacitus observes; *Qui deliberant, deservunt*. To doubt or hesitate in a point of allegiance, is direct treason and apostacy. And upon this ground it is, that the statute upon which your lordships are now to proceed hath these express words: 'If a man doth compass or imagine the death of the king,' &c. kings who are 'God's vice-gerents upon earth,' have thus far a kind of resemblance of the Divine Majesty, that their subjects stand accountable to them for the very thoughts of their hearts. Not that any man can know the heart, save God alone; but because when the wicked heart breaks out into any open expressions, by which it may be judged, it is the thoughts of the heart which makes the Treason; the Overt-act is but the evidence of it.

My lords, This care and caution is not so to be understood, as if it were the single interest of one royal person only. The law doth wisely judge and foresee, that upon the life of the king depends the laws and liberties, the estates and properties, the wealth and peace, the religion, and in sum, the glory of the nation.

My lords, This judgment of the law has been verified by a sad experience; for when that blessed king (whose blood we are now making inquisition for) was untimely taken away, religion and justice both lay buried in the same grave with him; and there they had slept still, if the miraculous return of our gracious sovereign had not given them a new resurrection.

My lords, My lord Coke in his Comment upon this Statute has one conceit, which is somewhat strange; I am sure it is very new; he seems to think that it would have added to the perfection of this law, if there had been a time limited for the party to be accused\*. But

\* By statute 7 W. 3, c. 3, it is enacted, That no prosecution shall be for any High Treasons, whereby corruption of blood may be made to an offender or his heirs, or for Misprision of such Treasons, unless the Indictment be found by a Grand Jury, within three years after the commission of the offence: From this enactment, however, are excepted all prosecutions for counterfeiting the royal coin, sign manual, signet, or seal, and also all prosecutions for designing, endeavouring, or attempting to assassinate the royal person. This statute was passed in a season of much ferment, and at the very time of an Assassination Plot against the excellent king on the throne. See the note to the Case of Don Pantaleon Sa, A. D. 1654,

certainly the work of this day has quite confuted that imagination. For here is a Treason that has so long out-faced the law, and the justice of this kingdom, that if there had been any time of limitation in the statute, there would have been no time nor place left for punishment. And if this Treason had but once grown up to an impunity, it might perhaps have drawn the guilt of that innocent blood, and with it the vengeance due to it, upon the whole nation.

The scope of this Indictment is for the compassing the death of the king. The rest of the Indictment, as the usurping authority over the king's person, the usurping, sitting, judging, and killing of the king, are but so many several overt-acts to prove the intention of the heart. We are not bound, under favour, to prove every one of these against every particular person that is indicted, for he that is in it one, is guilty in law, of all the rest, as much as if he had struck the fatal stroke. If, Nay, under favour, if we can prove any other overt act besides what is laid in the Indictment, as the encouraging of the soldiers to cry out Justice, Justice, or preaching to them to go on in this work, as godly and religious; or any other act of all that catalogue of villainies, for which the story will be too ever infamous, this may be given in evidence to prove the compassing and imagining the king's death. The conclusion of this Indictment alleges the fact done to be to the great displeasure of Almighty God, and to the disgrace of the people of England. A truth so clear and known, that it can neither be heightened by any aggravation, or lessened by any excuse.

As for the fact itself, with the manner of it, I shall not need to open it at large, for these things were not done in a corner; every true English heart still keeps within itself a bleeding register of this story; only, my lords, in the way to our evidence, with your lordships favour, this I think may be fit to be said.

First, for the year 1648 (for that was the fatal year of this king, and beyond that year we shall not now enquire) I say, whatsoever in the year 1648 could have been done by a parliament, to save the life of a king, was done in this case.

They opened the way to the Treaty in spite of the army; and while these sons of Zeruiah, who were too hard for them, were engaged in service in the remoter parts, they brasted the treaty as much as was possible, the debates upon his majesty's concessions were voted a good ground for peace, notwithstanding the remonstrances of the army still flew about their

ears, and notwithstanding the oppositions of a fearful and unbelieving party of the House of Commons, whom the army had frightened into an awful and a slavish dependance upon them. And when nothing else could be done for him, they were so true to the obligations they lay under, that they resolved to fall with him, and did so. For the army, who saw the treaty proceed so fast, made as great haste to break it. They seize upon the blessed person of our sacred king by force, and bring him to London; and here they force the parliament, shut out some members, imprison others, and then called this wretched little company which was left, a parliament. By this, and before they had taken upon them the boldness to dissolve the House of Peers, they pass a law, and erect, forsooth! an High Court of Justice, as they call it, a shambles of justice, appoint judges, advocates, officers, and ministers, sit upon the life of the king. Now they speak out and expound their own declarations, and tell us what that was which before they had demanded in obscure terms, when they called for justice against all delinquents. Now they speak plainly what they mean, and call this blessed king, this glorious saint, the Grand Delinquent:

‘Hæc acies victum factura nocentem est.’

My lords, When they had thus proceeded to appoint their judges, officers, and court, then they called this person, then only liege lord and sovereign, to the bar, and by a formal pagantry of justice proceed to sit upon him, arraign, try, sentence, condemn, and kill, I had almost said crucify, him, whom they could not but know to be their king, and all this against the clearest light, the sharpest checks, and most thorough convictions of conscience, that ever men resisted. And yet in this moment of time, such was the mystery and innocence of our gracious sovereign, that the people followed him with tears in their eyes, and exclamations in their mouths, God save the king, even then, when the soldiers were ready to fire upon them who did either look sadly, or speak affectionately. And yet it will appear upon our evidence too, that so few of the very common soldiers could be brought to approve these proceedings, or to cry out Justice, that their officers were fain by money or blows, or both, to bring a great many to it.

My lords, The actors in this tragedy were many, very many, so many, that sure their name is Legion, or rather many Legions. And certainly, my lords, when we shall consider the things that they have done, we cannot but look upon it as a villainy which had in it all the ingredients to make it detestable, that it was possible for the counsel of men, or devils either, to put together. But yet, if any thing can be of a deeper die than the guilt of that sacred blood wherewith they stand polluted, methinks their impudence should make them more odious than their treason. It was the destruction of God's Anointed, in the name of the Lord. It was the murder of a most blessed and beloved prince,

*ante*. Upon the whole, this statute, and the acceptance which it has received, seem to recognise, and adopt, and in a high degree, to approve that sentiment of lord Coke, which Finch, on this occasion, took upon himself to call ‘a somewhat strange and very new conceit’ See, as to Prescription of Grimes, the note to the *Witches' Case*, *ante*, vol. 4, pp. 829, 830.

in the name of his people. Him whom they had taken the transcendent boldness to imprison, as the author of the war, they put to death, because he would have been the author of our peace; and that with so much scorn and indignity, that some of them were not ashamed to spit in the face of our lord and sovereign. And when they had thus quenched the light of Israel, darkness and confusion did overspread the face of the land; many poor subjects at home, and some Protestants in foreign nations, at the very news of it fell down dead; as if this excellent king had been in a natural as well as a religious sense, the breath of our nostrils, the Anointed of the Lord, who was taken in their pits. The judges, officers, and other immediate actors in this pretended court, were in number about fourscore: of these some four or five and twenty are dead, and gone to their own place. The God of Recompences hath taken the matter so far into his own hands; and who knows but that it might be one dreadful part of his vengeance that they died in peace? Some six or seven of them, who were thought to have sinned with less malice, have their lives spared indeed, but are like to be brought to a severe repentance by future penalties. Some eighteen or nineteen have fled from justice, and wander to and fro about the world with the mark of Cain upon them, and perpetual trembling, lest every eye that sees them, and every hand that meets them, should fall upon them. Twenty-nine persons do now expect your justice. Amongst them, the first that is brought is the prisoner at the bar; and he deserves to be the first; for if any person now left alive ought to be stiled the conductor, leader, and captain of all this work, that is the man. He, my lord, brought the king up a prisoner from Windsor; but how, and in what manner, with how little duty, nay, with how little civility, to a common person, you will hear in time. He sat upon him, sentenced him, he signed the Warrant first to call that Court together, then the Bloody Warrant to cut off his sacred head. Against him, as against all the rest, our Evidence will be of two sorts: Witnesses *in voce*, that shall first prove to your Lordships that every person now in question did sit in that Court, when their King stood as a Prisoner at the Bar. We shall prove that the precept by which this pretended court was summoned, was not obeyed and executed, till it had had the hands and seals of most of the pretended judges; among the rest the hand of the prisoner at the bar will be found there. We shall prove his hand to the Bloody Warrant for severing the sacred head of our blessed sovereign from the body, and then some circumstances of his malice, and of his demeanour. And after we have done with our witnesses *in voce*, if we have occasion to use records of parliament, we shall shew them too; for we have the originals or authentic copies. But now we shall proceed to our Evidence.

Proclamation was made for silence.

Sir Edward Turner, My lords, the service

of this day doth call to my memory the story of good king Amaziah. We read in Holy Writ, that his father, king Joash, was murdered, and murdered by his own subjects; but we read further, that when Amaziah had regained the crown, was settled in the government, he slew those who slew his father. He did go down into Edom, the valley of Salt, and there he did slay ten thousand. The work of this day doth very much resemble that action. Our good and gracious king, his father of blessed memory, and our father, his natural, and our politic father, to whom our natural allegiance was due, was murdered, and by his own subjects. But, my lords, this was not a national crime; and our good and gracious sovereign hath done us that honour and right to vindicate us in foreign nations; and now he is come home in power and glory, he does continue in the same mind: That's the reason we are not now slain by thousands, but that those miscreants are gathered up here and there that did commit the offence, and would have involved the nation in a common infamy.

Gentlemen of the jury, your time to enquire of this matter is precious, more precious than my words, else I would repeat to you the history of that tragedy, at least that summary that was entered in the Black Book, or the journals of that they then called a Parliament. It shall suffice to tell you, and that most truly, that it was but an handful of men in respect to the whole nation, that did contrive and design this damnable and traitorous plot, to subvert the laws, and change the government of this well-governed nation. In prosecution of which they did cast abroad, and spread forth, jesuitical maxims, damnable and diabolical principles, to intoxicate the people; and when their heads were troubled, they were easily led into arms, where after some time they grew drunk with successes; and when they had drunk too much of the loyal blood of the people, then they thirsted for the royal blood also. I do confess we read in stories, that kings have before this time been murdered; some in our nation, as king Itich. 2 and Ed. 2; and in other nations. But the actors of those murders were modest to these. They did it in private; these in the face of the sun, and the people; but it was those people, gentlemen, they had corrupted with shares in their robberies and villanies. They pretended it was in the way of justice: but you must know, no justice can be executed upon the person of the king. Touch not mine Anointed, saith God himself.

My lords, I do read in the Roman story, that both amongst them and other nations, there was no law against parricide. It was not thought that any man was so unnatural and devilish to destroy his father. But we do find among the Romans such a fact was committed, and then they were at a loss to punish it. The way was this that was found out; the offender they sewed into a mail of leather, so close that no water could get in; when

they had done, they threw him into the sea ; by this denoting, the offender was not worthy to tread upon the ground, nor to breathe in the air, nor to have the benefit of any of the four elements, nor the use of any of God's creatures, and so be starved.

Gentlemen, Parricide and Regicide differ not in nature, but in degree. Parricide is the killing of the father of one, or a few persons ; Regicide the killing the father of a country. What punishment then is suitable to this offence ? Gentlemen, the prisoner at the bar is accused of this offence, and now to be tried by you : But before we enter upon the evidence, I must, with the leave of the Court, inform you, that though the Indictment contains many circumstances and gradations in the treason, yet the imagining and compassing the death of our late sovereign, is the treason to which we shall apply our evidence ; this being, both by the common-law, and by the statute of the 25th of Edward the 3d, the principal treason to be enquired of. And the other circumstances in the Indictment are but so many matters to prove the overt-act ; the consultations, the assuming power to try and condemn the king, the assault upon him, and the fatal blow that was given him, are but so many demonstrations, and open acts, proving the first treasonable design of the heart.

It will be enough for you, and so my lords will tell you, if we prove the treason itself, which is the compassing and imagining the death of the king, though we fail in some of the circumstances laid in the Indictment. I do not speak this, as if we should fail in any ; but it is not necessary to prove them all ; if we prove any, you are to find the prisoner Guilty. I am not willing to hold your lordships too long in the porch, but desire to descend into the body of the business ; and so we shall call our witnesses, and doubt not but to prove, that this man at the bar was the first, and not the least, of these offenders.

*Mr. George Masterson* was called.

*Harrison.* When I was before your lordships yesterday, I offered something very material, in reference to the jurisdiction of the Court ; but you told me, according to the rule, I must plead Guilty, or Not Guilty, and what I had to offer should be heard in its proper place. I now desire to know, whether it be proper now to deliver myself, before you proceed to the calling of witnesses ; for I would go the best way, and would not willingly displease you.

*L. C. Baron.* What was promised you yesterday, God forbid but you should have it ! But I think it will be best for you to hear the evidence, and then what you have to say shall be fully heard.

*Harrison.* I am content.

Whereupon *George Masterson*, *Stephen Kirk*, *Francis Hearn*, *William Clark*, *Robert Coytmor*, and *James Nulley*, were called, and sworn,

*Counsel.* Mr. Masterson, whether did the prisoner at the bar sit in that which they called the High Court of Justice, to Sentence the King, or no ? Pray tell my Lords and the Jury thereof, and what else you know of the matter.

*Masterson.* Upon the oath I have taken, my lords, and gentlemen, of the jury, I saw the prisoner, *Tho. Harrison*, sit in that which they called the High Court of Justice, upon the 27th day of January, in the year 1649, to Sentence the King ?

*Counsel.* Was it the day the Sentence was passed against the King ?

*Masterson.* It was the day of the Sentence.

*Counsel.* Can you say any thing else ?

*Masterson.* I do, sir, further remember, that when the Clerk of the Court, as he was called, read the Sentence against the King, and said, it was the Sentence of the whole Court, I saw the prisoner at the bar, together with others, stand up, to my apprehension, as assenting to it.

*Counsel.* Was there not direction that all should stand up as assenting ?

*Masterson.* I do not know that ; but when the Sentence was read several of them did stand up, and he among the rest, as assenting to the Sentence, as the spectators understood.

*Counsel.* Mr. Clark, What do you say to the same question ?

*Clark.* My lords, and gentlemen of the jury, I remember I saw the prisoner at the bar sit several times in the Court of Justice, as they called it ; particularly on the 28rd and 27th of January, 1649, as I took notice of it in a book.

*Counsel.* Was that the day of the Sentence ?

*Clark.* Yes, my lord.

*Counsel.* What say you to that of the rising of those persons in the Court ?

*Clark.* I remember they all rose, but I did not take particular notice then of the prisoner.

*Counsel.* Mr. Kirk, you hear the question. Did you see the prisoner at the bar in Westminster hall, sitting upon the bench in that which they called the High Court of Justice, when the King stood prisoner at the bar there ?

*Kirk.* My lord, I did see the prisoner at the bar sit several days in that which they called the High Court of Justice. I was there every day of their sitting.

*Counsel.* Do you remember he was there on the 27th of Jan. 1649 ?

*Kirk.* I do, sir.

*Counsel.* Tell the jury what was the work there.

*Kirk.* It was Sentence. I did take the names of all those gentlemen that did appear in the Court on that day, the 27th of Jan. 1649 ; and among the rest I took a note of that gentleman's name, as being present.

*Counsel.* Whereas these gentlemen (*Mr. Masterson* and *Mr. Clark*) have declared, that, as assenting to the Sentence, they all stood up, did you see them stand ? and whether by direction, or no ?

*Kirk.* As for the direction, I know nothing of it ; but the members then present in the Court, (after Sentence was read) as far as my

eyes could perceive, stood up unanimously, I suppose, as assenting to the Sentence.

*Court.* Mr. Nutley, Did you know the prisoner at the bar? Have you seen him sit in Westminster-hall at any time upon the bench when the King was brought as a prisoner to the bar?

*Nutley.* My lords, and gentlemen of the jury, I saw the prisoner at the bar several days sit there, amongst the rest of the Judges, as a Judge, I suppose. To the best of my remembrance, he sat there four days together.

*Court.* Was he there upon the day of the Sentence?

*Nutley.* I did take notes, my lord, that day in the Court, and I find he did sit that day.

*Court.* Do you know any thing more of the prisoner at the bar?

*Nutley.* Thus much I know concerning the prisoner at the bar, my lord. The first day they sat in public was (as I remember) the 20th of Jan. 1649; some few days afore that, there was a Committee that sat in the Exchequer Chamber, and of that Committee the prisoner at the bar was one of the members. I do remember well it was in the evening; they were lighting of candles, they were somewhat private. This gentleman was there, I saw him; for through the kindness of Mr. Phelps, who was then Clerk to that Committee, I was admitted, pretending first to speak with the said Mr. Phelps, and that I had some business with him; and so (as I said before) I was admitted, into the Committee chamber; Being there, I did observe some passages fall from the prisoner at the bar; the words were to this purpose: he was making a narrative of some discourses that passed between his late majesty and himself in coming between Windsor and London, or Hurst Castle, I know not well whether. My lord, that passage that I observed to fall from him in that discourse was this: he said, That the King, as he sat in the coach with him, was importunate to know what they intended to do with him.

*Harrison.* In the coach was it?

*Nutley.* Yea, sir, it was in the coach. He told the rest of the company (as I said before) that the King asked, 'What do they intend to do with me? Whether to murder me, or no?' And I said to him, 'There was no such intention as to kill him, we have no such thoughts.' 'But,' (said he) 'the Lord hath reserved you for a public example of justice.' There is one word more, my lords, and that is this, which I heard from this prisoner at the bar. The reason and end of their meeting together at that Committee was concerning the Charge. So much I observed. It was concerning the contracting of the Impeachment. I observed that some found fault with the length of that, as it was drawn. They were offering some reasons to contract it, and I heard this prisoner at the bar vent this expression; 'Gentlemen, it will be good for us to blacken him what we can; pray let us blacken him;' or words to that purpose. I am sure 'blacken' was his word.

*Mr. Windham.* Mr. Nutley, you speak of an

Impeachment. Against whom was that Impeachment?

*Nutley.* It was against his late Majesty the King.

*Counsel.* And it was to draw up that Impeachment so as to blacken him? Was it so?

*Nutley* Yes, Sir.

*Mr. Coytmore,* sworn.

*Mr. Windham.* Did you see the prisoner at the bar sitting in that which they called the High-Court of Justice on that day when the king was sentenced, or at any other time? Pray tell my lords and the Jury.

*Coytmore.* My lords and gentlemen of the Jury, I was in that which they called the High-Court of Justice three or four times. I saw this gentleman either once or twice sitting there.

*Counsel.* Do you know any thing more?

*Coytmore.* No, really; I came only to hear and see what they were doing, and I did there see him, I think, several days; I am sure once.

*Counsel.* Did you see him on the 27th of January 1649, sitting there, which was the day of the Sentence?

*Coytmore.* I cannot call that to memory.

*Counsel.* Do you know of any expressions, that the king should be an example of Judgment?

*Coytmore.* No, my lords.

*Mr. Windham.* My lords, in the next place we shall shew that Instrument that was made under the hand and seal of the prisoner at the bar as well as others, for execution of the king, that Bloody Warrant. But first we will ask this witness another question.

*Counsel.* Did you see the prisoner at the bar sit on the bench as an ordinary spectator, or as one of the Judges?

*Coytmore.* He was in the Court sitting among the rest of the Judges, as one of them.

*Mr. Solicitor.* My lords, we will prove that this prisoner at the bar was one of them that took upon him the conducting of the king, and that the king was in his custody; and to the High-Court of Justice also.

*The Lord Newburgh,* sworn.

*Counsel.* Pray, my lord, give yourself the trouble to raise your voice, and to tell my lords and the Jury what you know of the prisoner at the bar; the part that he acted in bringing up the king.

*Lord Newburgh.* I was then living at his majesty's lodge at Bagshot, when the prisoner at the bar brought the king from Hurst-Castle to London. He was the person that commanded the whole party; and when the king by the way went to dinner, by his orders there were centries set at every door where he was. When the king had dined he carried him to Windsor, and appointed several of his officers to ride close to the king, as he was riding, lest he should make his escape from them.

*Counsel.* That was an imprisonment itself, and so a treason.

*Mr. Windham.* My lords, we shall now pro-



duce to you two Instruments which were made, the one for convening and summoning the assembling of that which they called the High-Court of Justice, and shew this prisoner's hand and seal to that; and then shew you likewise that which was the consummating of all, that Bloody Warrant for execution of his late majesty of blessed memory, with the hand and seal of the prisoner at the bar unto it amongst others.

*Solicitor.* My lords, it will be fit before this to give you an account how he came by these Instruments.

*Mr. Jessop* sworn.

*Counsel.* Shew to Mr. Jessop the Warrant for summoning that Court.

*Solicitor.* Mr. Jessop, pray tell my lords and the Jury how you came by that instrument you have in your hand.

*Mr. Jessop.* May it please your lordships, having the honour to attend the house of commons, the house was pleased to make an Order that Mr. Scobell should deliver into my hands all such books and records, papers, and other things, as did belong to the house of commons; and in pursuance to that order I did receive amongst other things this instrument, as a thing that had been formerly in his hands, as clerk of the house of commons.

*Solicitor.* We desire it may be read, my lords.

*Court.* Pray first prove his hand.

*Mr. Harrison.* I desire to know what is offered to be read.

*Court.* It is a Warrant that you sealed, amongst other pretended Judges of your High-Court of Justice (as you called it), for Trial of the king, and for summoning that Court.

*Counsel.* Mr. Kirk, have you seen the hand-writing of the prisoner at any time?

*Kirk.* I have very often seen it, and am well acquainted with it; and so far as it is possible a man can testify touching the hand of another person I do verily believe this to be his hand.

*Counsel.* How came you to be acquainted with his hand?

*Kirk.* As he was a member of the House of Commons, and my employment having relation thereto, I have seen him set his hand several times.

*Mr. Farrington* sworn.

*Counsel.* Do you believe that this is the hand-writing of the prisoner at the bar? [The Instrument being shewed him.]

*Farrington.* I did not see him write it, my lords, but I believe it to be his, for I have often seen his hand-writing. It is his hand, so far as possibly a man can know any person's hand that did not see him write.

*Harrison.* I desire to see the Instrument.—Which being shewed to him, he said, 'I believe it is my own hand.'

*Counsel.* That the Warrant for summoning that Court that he owns his hand to.

*Court.* Shew him the other Instrument.

That being for execution of the Sentence; it being shewed him.

*Harrison.* I do think this is my hand too.

*Counsel.* If you think it the Jury will not doubt it. That's the Bloody Warrant for execution; and we desire they may be both read.

*Harrison.* My lords, do these learned gentlemen offer these as being any records?

*Counsel.* No, but as your own hand-writing.

*Harrison.* If you do not read it as a Record, I hope your lordships will not admit of any thing of that kind against me.

*Counsel.* He knows that a letter under his hand and seal may be read in a Court. We do not offer it as a record, but prove it by witnesses that it is your hand-writing.

*Court.* You have confessed these to be your hands. Whether they are records, or no; whether papers, or letters, they may be read against you, you signed the Warrant for convening together those which you called the High-Court of Justice, and you signed the other Warrant for putting the king to death. You do confess these two things. We do not see what further use may be made of them.

*Court.* You might observe how the Indictment was for the imagining, compassing and contriving the king's death. To prove that, there must be some Overt-act; and a letter under the party's hand is a sufficient Overt-act to prove such imagination; to that end these are used.

*Harrison.* I do not come to be denying any thing that in my own judgment and conscience I have done or committed, but rather to be bringing it forth to the light.

*Court.* Sir, you must understand this by the way, this you must take along with you, that these are read not as any thing of authority in themselves, or as used to any other purpose, but as on evidence of the fact against you: Take that along with you.

[The two Bloody Warrants for Trial, and for Execution of his Majesty, were here read, the latter of which is as followeth.]

" At the High Court of Justice for the trying and  
" judging of Charles Stuart, King of Eng-  
" land, Jan. 29, 1649.

" Whereas Charles Stuart, King of England,  
" is and standeth convicted, attainted, and con-  
" demned, of High-Treason, and other high  
" crimes; and Sentence upon Saturday last was  
" pronounced against him by this Court, to be  
" put to death, by the severing his head from  
" his body, of which Sentence execution yet re-  
" maineth to be done: these are therefore to  
" will and require you to see the said Sentence  
" executed in the open street before White-  
" hall upon the morrow, being the 30th day of  
" this instant month of January, between the  
" hours of Ten in the morning and Five in the  
" afternoon of the same day, with full effect;  
" and for so doing this shall be your sufficiency.  
" Warrant. And these are to require all offi-  
" cers and soldiers, and other the good people

"of this nation of England, to be assistant  
"unto you in this service. Given under our  
"hands and seals.

"To Colonel Francis Hacker, Colonel  
"Hunks, and Lieut. Colonel Phayre,  
"and every of them."

Sealed and subscribed by

John Bradshaw, Lord President.	Dan. Blagrove.
Jo. Hewson.	Owen Roe.
Per. Pelham.	Will. Bairefoy.
John Danvers.	Thomas Maleverer.
Mich. Livesay.	Jo. Blakestone.
Jo. Bourchier.	Jo. Hutchinson.
Hen. Ireton.	Will. Goff.
Thomas Grey.	Adrian Scroop.
Oliver Cromwell.	James Temple.
Edward Whalley.	Aug. Garland.
John Okey.	Edmund Ludlow.
Thomas Pride.	Hen. Marten.
Hen. Smith.	Vincent Potter.
Peter Temple.	Will. Constable.
Tho. Harrison.	Rich. Ingoldsby.
Isaac Ewer.	Will. Cawley.
Val. Wauton.	Joh. Barkstead.
Simon Meyn.	Anth. Stapely.
Tho. Horton.	Greg. Norton.
Jo. Jones.	Tho. Challoner.
Jo. Moor.	Tho. Wogan.
Hardress Waller.	Jo. Ven.
Gilbert Millington.	Greg. Clement.
Geo. Fleetwood.	Jo. Downs.
Alured.	Tho. Wayt.
Rob. Lilburn.	Tho. Scot.
Will. Say.	Jo. Carew.
Rich. Dean.	Miles Corbet.
Rob. Tichbourn.	
Hum. Edwards.	

*Mr. Windham.* Gentlemen of the Jury, we have done our evidence; and you must know, gentlemen, that the principal point of the indictment is for compassing, imagining, and contriving the death of his late Majesty of glorious memory. There lies the Treason; so says the statute of the 25th Ed. 3. It hath nothing of killing the King there, but of imagining and compassing the death of the King. The going about it, that's the Treason, as hath been learnedly opened to you; the rest are but overt-acts: If there be such an imagination or compassing the death of the King once declared, though no fruit at all follow, it is Treason. Here, certainly you have a very full evidence given. We shew you a Consultation, this is one overt-act, which would do the work, if there were nothing else. I must tell you, (and that with submission to my lords the justices,) if they had advised, and gone no further, that had been Treason in the letter of the law. They convened and met together, and suppose then they had absolved and acquitted him, do you think they had absolved themselves from Treason? With reverence be it spoken, if they had acquitted him they had been guilty of Treason. Assuming a power to put the King to death is an

overt-act declaring such an imagination. You see this prisoner was no ordinary actor in it; his hand is in at all games. Taking of him, imprisoning of him, bringing him to London, and setting guards on him. You see also his malice, 'let us blacken him'; for they knew his innocency would shine forth, unless it was blackened by their imputations. He sate many times, as you hear, and sentenced him, and assented to that sentence by standing up, and likewise by concluding the catastrophe of that sad beginning of sufferings, his making a Warrant for his execution; and accordingly you know what did follow: I think a clearer evidence of a fact can never be given than is for these things.

[Here the spectators hummed.]

*Lord Chief Baron.* Gentlemen, this humming is not at all becoming the gravity of this Court. Let there be free speaking by the Prisoner and Counsel. It is more fitting for a stage-play than for a Court of Justice.

*Harrison.* It is now time, my lords, to offer what I have to say. Have these learned gentlemen offered what they will say.

*Counsel.* We have no more till he hath given us occasion; not for evidence of the fact.

*Harrison.* My lords, the matter that hath been offered to you, as it was touched, was not a thing done in a corner. I believe the sound of it hath been in most nations. I believe the hearts of some have felt the terrors of that presence of God that was with his servants in those days, (however it seemeth good to him to suffer this turn to come on us,) and are witnesses that the things were not done in a corner. I have desired, as in the sight of him that searcheth all hearts, whilst this hath been done, to wait, and receive from him convictions upon my own conscience, though I have sought it with tears many a time, and prayers over and over, to that God to whom you and all nations are less than a drop of water of the bucket; and to this moment I have received rather assurance of it, and that the things that have been done as astonishing on one hand, I do believe ere it be long it will be made known from Heaven, there was more from God than men are aware of. I do profess that I would not offer of myself the least injury to the poorest man or woman that goes upon the earth. That I have humbly to offer is this to your lordships; you know what a contest hath been in these nations for many years. Divers of those that sit upon the bench were formerly as active—

*Court.* Pray, Mr. Harrison, do not thus reflect on the Court. This is not the business.

*Harrison.* I followed not my own Judgment; I did what I did, as out of conscience to the Lord; for when I found those that were as the apple of mine eye to turn aside, I did loath them, and suffered imprisonment many years. Rather than to turn as many did, that did put their hands to this plough, I chose rather to be separated from wife and family

than to have compliance with them, though it was said, 'Sit at my right-hand,' and such kind expressions. Thus I have given a little poor testimony that I have not been doing things in a corner, or from myself. May I might be a little mistaken; but I did it all according to the best of my understanding, desiring to make the revealed will of God in his Holy Scriptures as a guide to me. I humbly conceive that what was done, was done in the name of the Parliament of England, that what was done, was done by their power and authority; and I do humbly conceive it is my duty to offer unto you in the beginning that this Court, or any Court below the High-Court of Parliament, hath no jurisdiction of their actions. There are many learned in the law, and to shorten the work, I desire I may have the help of counsel learned in the laws, that may in this matter give me a little assistance to offer those grounds that the law of the land doth offer. I say, what was done was done by the authority of the Parliament, which was then the Supreme Authority, and that those that have acted under them are not to be questioned by any power less than them. And for that I conceive there is much out of the laws to be shewed to you and many Precedents also in the case. Much is to be offered to you in that; according to the laws of the nations, that was a due Parliament. Those Commissions were issued forth, and what was done was done by their power; and whereas it hath been said we did assume and usurp an authority, I say this was done rather in the fear of the Lord.

*Court.* Away with him. Know where you are, Sir; you are in the assembly of Christians; will you make God the author of your treasons and murders? Take heed where you are. Christians must not hear this. We will allow you to say for your own defence what you can; and we have with a great deal of patience suffered you to sally out, wherein you have not gone about so much for extenuation of your crimes, as to justify them, to fall upon others, and to blaspheme God, and commit a new Treason: For your having of counsel, this is the reason for allowing of counsel: When a man would plead any thing, because he would plead it in formality, counsel is allowed. But you must first say in what the matter shall be, and then you shall have the Court's answer.

*Lord Finch.* Though my lords here have been pleased to give you a great latitude, this must not be suffered, that you should run into these damnable excursions, to make God the author of this damnable Treason committed.

*Harrison.* I have two things to offer to you, to say for my defence in matter of law. One is, That this that hath been done was done by a Parliament of England, by the Commons of England assembled in parliament; and that being so, whatever was done by their commands or their authority, is not questionable by your lordships, as being (as I humbly conceive) a power inferior to that of High-Court of Parliament; that is one. A second is this, That what,

therefore, any did in obedience to that power and authority, they are not to be questioned for it; otherwise we are in a most miserable condition, bound to obey them that are in authority, and yet to be punished if obeyed. We are not to judge what is lawful, or what is unlawful. My lords, upon these two points I do desire that those that are learned in the laws may speak to on my behalf. It concerns all my countrymen. There are cases alike to this, you know, in king Richard the 2d's time, wherein some question had been of what had been done by a Parliament; and what followed upon it I need not urge in it. I hope it will seem good to you that counsel may be assigned, for it concerns all my countrymen.

*Counsel.* You are mistaken, if you appeal to your countrymen; they will cry you out, and shame you.

*Harrison.* May be so, my lords; some will, but I am sure others will not.

*Mr. Solicitor General.* These two points, my lords, are but one, and they are a new Treason, at the bar, for which he deserves to die, if there were no other indictment. It is the malice of his heart to the dignity and crown of England. I say, this is not matter for which counsel can be assigned. Counsel cannot put into form that which is not matter pleadable itself. It is so far from being true, that was the act of the Supreme Parliament of the people of England, that there was nothing received with more heart-bleeding than this bloody business. But that the world may not be abused by the insinuations of a man, who acts as if he had a spirit, and in truth is possessed; I will say, that the Lords and Commons are not a Parliament; that the King and Lords cannot do any thing without the Commons; nor the King and Commons without the Lords; nor the Lords and Commons without the King, especially against the King. If they do, they must answer it with their head; for the King is not accountable to any coercive power. And for the prisoner to justify his act, as if it were the act of the Commons of England, he is very much to be reproved: Shall he pretend that one house, nay, the eighth part of a house (for so it was), can condemn a King, when both houses cannot condemn one man in spite of the King? I desire, my lords, it may pass with a due reproach and sentence upon it.

*L. C. Baron.* It is true, your questions are but one point. You pretend the Parliament's authority, and when you come to speak of it, you say the Commons of England. They were but one house of Parliament. The Parliament, what is that? It is the King, the Lords, and the Commons. I would fain know of you where ever you read, by the light you say you have in your conscience, that the Commons of England were a Parliament of England, that the Commons in Parliament used a legislative power alone. Do you call that a Parliament that sat when the House was purged,\* as they

call it, and was so much under the awe of the army, who were then but 40, or 45 at most? Then you say it was done by authority of them. You must know where there is not an authority (which indeed is no authority,) he that commands such an authority, he commits a double offence, therefore consider what your Plea is. If your Plea were doubtful, we should and ought and would, ourselves be of counsel for you. That which you speak concerning 'conviction of your own conscience,' remember that it is said in Scripture, that they 'shall think they did God good service when they slay you, as it is in St. John. He hath a great deal of charity that thinks that what you did was out of a conscientious principle; it was against the light of nature and common practice. You make your chief Solicitor in the business. 'Let us blacken him as much as we can.' I have not touched it all upon the Evidence, I will not urge it now. I say you justify it upon 'convictions of conscience,' and pretend it upon 'integrity,' a thing never known or seen under the sun, that the Commons, my few Commons alone, should take upon them, and call themselves the Parliament of England. We have been cheated enough by names and words, there is no colour for what you say. I do think and hope my brethren will speak to this case that none of us do own that convention, whatsoever it be, to be the Parliament of England. There was another aggravation, at this time that this pretended authority usurped that power, the Lords were then sitting. You had not taken this usurped power to dissolve those Lords. No; you did this act in despite of the Lords, you had sent up an Ordinance to the Lords, and they rejected it, and thereupon these members took it upon themselves, amongst those there were some negatives, and these members were under the awe and power of your forces at that time. What you plead, the Countenance of opinion tends to the subversion of the laws; for you do to usurp power over the people without their consent, to call this the people, we never knew the like before, but the Parliament of England was the King, Lords and Commons. For you to speak of this power, and justify this power, is an aggravation, adding one sin and treason to another. We shall tell you, that neither both Houses of Parliament, if they had been there, nor any single person, community, nor the people either collectively, or representatively, had any colour to have any creature power over the King. And this Plea which you have set on of it, ought to be overruled, and not to stand good.

Mr. Annesley. I do the more willingly speak to this business, because I was one of those that should have made up that Parliament that this prisoner pretends to. I was one of that 'corrupt majority' (as they called it) that were put out of the House. He cannot forget that at that time there were guards up in both Houses of Parliament to attend them,

that were of their own appointment, and that these guards were forcibly removed by the prisoner at the bar, and his fellows, and other guards put there, who instead of being a defence unto them when those Commons stood at the door, were by them threatened. Yet the Lords and Commons of England in Parliament assembled, a full house of Commons, did resolve, notwithstanding what was aforesaid, that the trial in the Isle of Wight 'was a ground for Peace.' Afterwards the major part of the House of Commons having resolved on this, sent it up to the Lords, that very day when they were adjourned there were officers drawn down to the house of Commons door, and forces sent to come into the house but those that they pleased. All those that had a mind for peace, that minded their duty, and trust, and all the rest of the King, were seized on by this certain and his fellows. When this was done, what did these fellows do? They sat and put a check up on all those that should come in. None must come in but those that they could pronounce their allegiance and duty to the King and the people, for whom they served, and then proceeded against that Vote which had been passed upon debate of twelve or fourteen hours, and then to call this a House of Commons, nay, the Supreme Authority of the Nation, he knows is against the laws of the land. For the House of Commons is a name so much as give in oath. It hath no power of Judicature of life and death, this he knows will be according to the laws of England. He knows that no authority less than an Act of Parliament can make a law, and he knows an Act of Parliament must be passed by the King, Lords, and Commons. I wonder much to hear a justification in this kind by one that knows the laws of England so well. There will none of the Court allow that that was a Parliament. The majority of the house did all disavow it. These things have been already answered; I shall only say, that I know the laws so well, I hope he shall suffer for transgression thereof.

Mr. Holls. You do very well know that it is that you did, this hard, detestable act which you committed, could not be perjured by you till you had sworn in the Parliament. That House of Commons, which you say gave you authority, you know well yourself made of it when you pulled it out of the Speaker,\* therefore do not make the Parliament to be the author of your felonies. It was innocent of it. You may as well what esteem you had of it, when you broke and tore it in sunder, when you entered, and made them hide themselves, to preserve them from your fury and violence: do not make the Parliament to be the author of your crimes. The Parliament are the three Estates. It must not be admitted that one House, put out of the Parliament, should be called the Supreme Authority. You know what

\* See 3 Cobb Parl Hist p. 1383.

that Rump that you left did, what laws they made. Did you go home to advise with your country that chose you for that place. You know that no Act of Parliament is binding but what is acted by King, Lords, and Commons. And now as you would make God the author of your offences, so likewise you would make the people guilty of your opinion, but your Plea is overruled.

• To which the Court as entered

*Harrison* I was mistaken a little. Whereas it was said the points were one, I do humbly conceive they were not so. I say what was done, was done in obedience to the Authority. It was not an Order of the house of Commons, this under a tree, yet this Court is not judge of that force. Is y, if it was done by one estate of parliament, it is not to be questioned.

*Court* It was not done by one estate, they were but a part, nay, but an eighth part.

*De Witt* It was not in House of Commons. They put up a country by the power of the sword. Do not abuse the people, in saying, it was done by the Supreme Power.

*Counsel* My lord, if it were in House of Commons, neither House of Commons nor House of Lord, nor House of Lords and Commons together, no authority upon earth can give authority from making the King, this that he alleges is treason, my lord, is that it is said is a clear Evidence of that which is charged, therefore only thus more in it he hath done it, and if he were to do it again, he would do it.

*Lord Chief Justice* It is clear as the noon day, that this was not the House of Commons. Suppose it had been an House of Commons, and full, and suppose (which I will let it from me to suppose) they should have agreed upon such a murderous act, that the House of Commons to do such an act, it was void in itself. Nay, any authority without the House of Lords and King is void. You plead to the jurisdiction of the Court, whether we should judge it, or no. Yes, I tell you, and proper too. We shall not speak what power we have, the judges have power after laws are made to go upon the interpretation of them. We are not to judge of those things that the Parliament do. But when the Parliament is purged (as you call it), for the Commons alone to act, for you to say that this is the authority of Parliament, it is that which every man will say 'intrenches highly upon his 'liberty and privilege.' And what you have said to your justification, what doth it tend to but as much as this, 'I did it, justify it, and 'would do it again,' which is a new treason. The greatest right that ever the House of Commons did claim is but over the Commons. Do they claim a particular right over the Lords? Nay, over the King? Make it out if you can, but it cannot possibly be made out. What you have said doth aggravate your crimes. It is such an aggravation of your treason, that all Evidences come short of it. King, Lords, and

Commons, is the ground of the English Law; without that no Act of Parliament binds.

*Justice Mallet* \* I have been a parliament man as long as any man here present, and I did never know or hear that the House of Commons had jurisdiction over any, saving their own members, which is as much as I will say concerning the Parliament. I have heard a story of a mute, that was born mute, whose father was slain by a stranger, a man unknown. After twenty years, or thereabout, this mute man happened to see the murderer of his father, and these were his words, 'O! here is he that slew my father.' Sir, the king is the father of the country, '*pater patriæ*,' so saith sir Edward Coke. He is '*caput republicæ*,' the head of the Commonwealth. Sir, what have you done? Here you have cut off the head of the whole Commonwealth, and taken away him that was our father, the governor of the whole country. This you have printed and published in a book of the greatest lawyer, sir Edward Coke. I shall not need, my lord, to say more of this business. I do hold the prisoners' plea void and unreasonable, and to be rejected.

*Justice Hyde* I shall not trouble you with many words. I am sorry that any man should have the face and boldness to deliver such words as you have. You, in all, must know, that the King is above the two houses. They must propose their laws to him. The laws are made by him, and not by them, by their consent, but they are his laws. That which you speak as to the jurisdiction, you are here indicted for High-Treason, for you to come to talk of justification of this by pretence of authority, your Plea is naught, illegal, and wicked, and ought not to be allowed. As to having of Counsel, the Court understand what you are upon, Counsel is not to be allowed in that Case, and therefore your Plea must be overruled.

*Mr Justice Twissden* I shall agree with that which many have already said, only this, you have eased the Jury, you have confessed the fact. I am of the same opinion, that you can have no Counsel, therefore I overrule your Plea, if it had been put in never so good form and manner.

*Earl of Manchester* I beseech you, my lords, let us go some other way to work.—

*Sir William Wild* That which is before us, is whether it be a matter of law or fact. For the matter of law, your lordships have declared what it is, his justification is as high a treason as the former. For matter of fact, he hath confessed it. I beseech you, my lord, direct the Jury for their verdict. This gentleman hath forgot their barbarousness, they would not hear their king.

\* This judge Mallet had been imprisoned in the Tower by the Parliament, for an offence in the matter of the Kentish Petition in 1642.

See the Case of Sir Edward Dering, *Ante*, vol. 4, p. 151.

*Court.* No Counsel can be allowed to justify a treason; that this is a treason, you are indicted by an act of the 25th of Edw. 3. That which you speak of the House of Commons, is but part of the House of Commons; they never did, nor had any power to make a law, but by King, Lords, and Commons; and therefore your plea is naught, and all the Court here is of the same opinion; if they were not, they would say so; therefore what you have said is over-ruled by the Court. Have you any thing else to offer?

*Harrison.* Notwithstanding the judgment of so many learned ones, that the kings of England are no ways accountable to the parliament, the Lords and Commons in the beginning of this war having declared the king's beginning war upon them; the God of Gods—

*Court.* Do you render yourself so desperate, that you care not what language you let fall? It must not be suffered.

*Harrison.* I would not willingly speak to offend any man; but I know God is no respecter of persons. His setting up his standard against the people—

*Court.* Truly, Mr. Harrison, this must not be suffered: this doth not at all belong to you.

*Harrison.* Under favour this doth belong to me. I would have abhorred to have brought him to account, had not the blood of Englishmen, that had been shed—

*Counsel.* Methinks he should be sent to Bedlam, till he comes to the Gallows to render an account of this. This must not be suffered. It is in a manner a New Impeachment of this king, to justify their treasons against his late majesty.

*Solicitor-General.* My lords, I pray that the jury may go together upon the Evidence.

*Sir Edw. Turner.* My lords, this man hath the plague all over him; it is pity any should stand near him, for he will infect them. Let us say to him as they used to write over an house infected, 'The Lord have mercy upon him,' and so let the officer take him away.

*L. C. Baron.* Mr. Harrison, we are ready to hear you again; but to hear such stuff, it cannot be suffered. You have spoken that which is as high a degree of blasphemy, next to that against God, as I have heard. You have made very ill use of these favours that have been allowed you to speak; your own conscience cannot but tell you the contradiction of your actions against this that you have heard as the opinion of the Court. To extenuate your crimes you may go on, but you must not go on as before.

*Harrison.* I must not speak so as to be pleasing to men; but if I must not have liberty as an Englishman—

*Court.* Pray do not reflect thus; you have had liberty, and more than any prisoner in your condition can expect; and I wish you had made a good use of it. Keep to the business, say what you will.

*Harrison.* My lords, thus: There was a discourse by one of the witnesses that I was at

the committee preparing the Charge, and that I should say, 'Let us blacken him.' This thing is utterly untrue; I abhorred the doing of any thing touching the blackening of the king. There was a little discourse between the king and myself. The king had told me that he had heard that I should come privately to the Isle of Wight to offer some injury to him; but I told him I abhorred the thoughts of it. And whereas it is said that my carriage was hard to him when I brought him to London, it was not I that brought him to London, I was commanded by the general to fetch him from Hurst-Castle. I do not remember any hard carriage towards him.

*Court.* Mr. Harrison, You have said, that you deny that of Blackening which the witness hath sworn; and some what else touching the king in his way to London, that the witness hath sworn to also. The jury must consider of it, both of their oaths and your contradictions. If you have nothing more to say, which tends to your justification, we must direct the jury. The end of your speech is nothing but to infect the people.

*Harrison.* You are uncharitable in that.

*Justice Foster.* My lords, This ought not to come from the Bar to the Bench; if you sally out thus about your conscience; if your conscience should be a darkened conscience, that must not be the rule of other men's actions. What you speak of that nature is nothing to the business. If you have any thing to say, by way of excuse for yourself for matter of fact, you may speak: but if you will go on as before, it must not be suffered.

*Harrison.* The things that have been done, have been done upon the stage, in the sight of the Sun—

*Court.* All this is a continuance of the justification and confession of the fact. We need no other evidence.

*Counsel.* He hath confessed his fact, my lords. The matter itself is treason upon treason; therefore we pray direction to the jury.

*L. C. Baron.* Mr. Harrison, I must give direction to the jury, if you will not go further touching the fact.

*Harrison.* My lords, I say what I did was by the Supreme Authority. I have said it before, and appeal to your own consciences, that this Court cannot call me to question.

*L. C. Baron.* Mr. Harrison, you have appealed to our consciences. We shall do that, which, by the blessing of God, shall be just; for which we shall answer before the Tribunal of God. Pray take heed of an obdurate, hard heart, and scared conscience.

*Harrison.* My lords, I have been kept six months a close prisoner, and could not prepare myself for this trial by counsel. I have got here some acts of parliament of that house of commons, which your lordship will not own; and the proceedings of that house, whose authority I did own.

*L. C. Baron.* This you have said already. If you shew never so many of that nature,

they will not help you you have heard the opinion of the Court touching that Authority They all unanimously concur in it

*Gentlemen of the jury,* You see that this prisoner at the bar is indicted for compassing, imagining, and contriving the death of our late sovereign Lord, King Charles the First, of blessed memory In this indictment there are several things given but as evidences of it they are but the overt-acts of it The one is first, that they did meet and consult together about the putting the king to death, and that alone, if nothing else had been proved in the case, was enough for you to find the indictment, for the imagination alone is treason by the law but because the compassing and imagining the death of the king is secret in the heart, and no man knows it but God Almighty, I say, that the imagination is treason, yet it is not such as the law can take hold of, unless it appears by some overt-act Then the first overt-act is their meeting, consulting, and proposing to put the king to death The second is more open, namely, their sitting together, and assuming an authority to put the king to death The third is entencing the king And I must tell you, that any one of these acts prove the indictment If you find him guilty but of any one of them, either consulting, proposing, sitting, or entencing (though there is full proof for all, yet notwithstanding you ought to find the indictment You have heard what the witnesses have said, and the prisoner's own confessions Witnesses have sworn their sitting together, and that he was one one says he said four times, another twice; some several times There are several witnesses for this, is Mr. Maiterson, Mr. Clerk, Mr. Kirl, and Mr. Nutley And then you have another thing too, which truly the prisoner did not speak of Witness was given against him, that he was the person that conducted the king, thus was before that which he would have to be done by legislative power, and that is another overt-act If a man will go about to imprison the king, the law knows what is the sad effect of such imprisonment That hath often been adjudged to be an evidence of imagining and compassing the death of the king That man, the prisoner at the bar, it hath been proved to you, did imprison the king; as appears by his own hand to the warrant for summoning of that traitorous assembly, the High Court of Justice, as they called it And also it appears by his hand to the warrant for execution, that Bloody Warrant He hath been so far from denying, that he hath justified these actions. The Evidence is so clear and pregnant as nothing more I think you need not go out

The jury went together to the bar, and presently unanimously agreed on their verdict, whereupon they were demanded by the clerk,

*Clerk* Are you agreed on your Verdict?

*Jury* Yes

*Clerk* Who shall say for you?

*Jury.* Our Foreman. (Which was sir T. Allen)

*Clerk.* Thomas Harrison, Hold up thy hand. Gentlemen of the Jury, look upon the Prisoner. How say ye? Is he Guilty of the treason whereof he stands indicted, and hath been arraigned? Or Not Guilty?

*Foreman* Guilty

I then the keeper was charged to look to the prisoner

*Clerk* What goods and chattels had he at the time of committing this treason, or at any time sithence?

*Foreman* None to our knowledge

Which verdict being repeated to the Jury by Mr. Clerk of the crown, the Jury owned it unanimously

*Solicitor Gen.* My lords, upon this verdict that hath been given against the prisoner at the bar I humbly move, that we may have Judgment given Your sessions will be long, and your work will be great, his demeanour hath been such that he doth not deserve a reprieve for so many days that you are like to spend in this session.

*Court* Mr. Harrison, they desire Judgment upon the verdict What do you say for yourself why Judgment should not pass against you?

*Clerk* Thomas Harrison, hold up thy hand What hast thou to say for thyself why Judgment should not pass against thee, to die according to law?

*Harrison* I have nothing further to say, because the Court have not seen meet to hear what was in my heart to speak, I submit to it.

The Crier made Proclamation for Silence whilst Judgment was in giving

*L C Baron* You that are the prisoner at the bar, you are to pass [or receive] the sentence of death, which sentence is thus The Judgment of this Court is, and the Court doth award, That you be led back to the place from whence you came, and from thence to be drawn upon a hurdle to the place of execution, and there you shall be hanged by the neck, and being alive shall be cut down, and your privy members to be cut off, your entrails to be taken out of your body, and, you living, the same to be burnt before your eyes, and your head to be cut off, your body to be divided into four quarters, and head and quarters to be disposed of at the pleasure of the king's majesty, and the Lord have mercy upon your soul.\*

And then Proclamation was made for adjournment of the Court to this place till seven of the clock to-morrow morning, and all Jurymen and witnesses were commanded to be at the said place and time upon forfeiture of 100*l.* a-piece

#### TRIAL OF ADRIAN SCROOP.

October 12, 1660.

The Proclamation for Silence.

The Jury called

Prisoners brought to the bar, viz. John

\* See some account of his subsequent conduct and Execution, *post.*

Jones, Adrian Scroop, Thomas Scot, Gregory Clement, John Carew.

*Crier.* Sir Thomas Allen.

*Clerk.* Sir Thomas Allen, lay your hand upon the book, look upon the prisoner at the bar.

*Scroop.* I challenge him, my lord.

*Lord Chief Baron.* That you may not mistake, if you challenge in this manner, and do not join your challenges, we must try you severally one after another; I must tell you the law; if one challenge one, and another challenge another, we must sever, and go on one by one. Call the next.

*Clerk.* Sir Henry Worth.

*Scroop.* I challenge him.

*Lord Chief Baron.* Then we must go on severally. Set all aside but Mr. Scroop. Mr.

\* "Col. Adrian Scroop was accused for sitting as one of the Judges in the High Court of Justice, when the King was brought to answer as a prisoner at the bar, for signing one Warrant for summoning that Court together, and another for the Execution of the King. He denied nothing of this. But pleaded the authority of the parliament in his justification: denying that he had been acted by any motive of malice, as the Indictment had untruly suggested; and asserting, that in what he had done relating to the King, he had followed the light of his reason, and the dictates of his conscience. At this time the principal witness was that Brown, who, having been major general in the service of the parliament, and mentioned already in this work to be of a mercenary spirit, was now brought to betray a private conversation; and to depose, That talking one day with col. Adrian Scroop in the Speaker's chamber, and telling him, that the condition of the nation was sad since the murder of the King, the Colonel had answered, That men had different opinions touching that matter: and being desired by the said Brown to explain himself, he told him, he should not make him his confessor. Though this evidence be in appearance very insignificant; yet, having influenced the House of Commons, as I mentioned before, it is not to be admired if it took effect with a Jury in an inferior court; who, taking every thing said against the person accused for substantial proof, made no scruple of bringing him in Guilty of Treason.

"He was descended of an ancient family, and possessed of a considerable estate. His port and mien was noble, and the endowments of his mind every way answerable. He appeared early in the Army of the Parliament, being present and engaged at the Battle of Edge-hill, in the head of a troop of horse, which he had raised. He was first advanced to the degree of a major, and soon after appointed to be colonel of a regiment of horse. He had been, for several years, governor of the castle of Bristol; and when the parliament thought fit to slight that garrison, they made him one of their Commissioners for the civil

Scroop, you may challenge particularly whom you will till you come to thirty five; if you go beyond that number, you will lose the benefit of the law.

*Scroop.* I desire, my lord, that whosoever was challenged yesterday, may not be called again.

*Court.* No, that cannot be, that is nothing to you. The Court thereupon proceeded and called—

*Challenged.* John. Lisle, Nich. Maynton, Thomas Winter, Thomas Franklyn, Randal Nichol, J. Kink, Ambrose Scadamore, George Tirrey, who were all challenged.

*Jury.* Thomas Willet, Hen. Marsh, Charles Pittchell, Christopher Abney, Richard Chocoy, Tho. Bid, Jo. Smith, Richard Abel, Ralph Halsel, Jo. Galliard, Tho. Swallow, Samuel Branch, were admitted, and sworn on the jury.

*Clerk.* *Crier,* make proclamation. If any man can inform my Lords, the King's Justices, the King's Serjeant, or the King's Attorney, before this quest be taken between our sovereign lord the King, and the prisoner at the bar, let them come forth and they shall be heard, for now the prisoner stands at the bar upon his delivery; and all others bound by recognizance to give Evidence against the prisoner at the bar, let them come forth and give their evidence, or else they shall forfeit their recognizance.

*Clerk.* Adrian Scroop, hold up thy hand; you gentlemen that are sworn, look upon the

government of Scotland, in conjunction with the lord Broghill, Monk, and others. In all these employments he manifested such abilities and fidelity, that the Parliament appointed him to be one of the Commissioners for the trial of the late King; in which place he acted with all the impartiality that becomes a judge in whom so great a trust is reposed, and who ought to be no respecter of persons. The hard measure he received from the Convention at Westminster, I have already mentioned. It remains only to give some account of what he said at the place where he suffered death; which was to this purpose: That though he had been accustomed to be seen in better places, and other kind of circumstances; yet it being the will of God he should be brought into this condition, he submitted cheerfully; that he never had entertained malice against any man; and that he now wished no ill either to the Jury who found him Guilty, or to the Judges who pronounced Sentence; or even to the person by whose means he was brought to that place, who, he presumed, was so well known, that it was not necessary to name him. He said, he should not boast of his birth or education, or the private conduct of his life; because he was going to appear before a tribunal where all men must come, and where the justice or injustice of every action would be manifest; desiring the people in the mean time not to think uncharitably of him, for he was firmly persuaded he suffered for the cause of God and his Country." § Ludlow, pp. 53, 65.



prisoner, and hearken to his charge ; you shall understand, &c. upon this indictment he hath pleaded Not Guilty.

*Mr. Sol. Gen.* May it please your lordships, and you gentlemen of the jury, this prisoner at the bar stands indicted for compassing and imagining the death of the late king, of blessed memory. The indictment sets out, that to that end and purpose the prisoner at the bar did, with others, assemble and sit together at Westminster Hall, consulting upon him, and usurped an authority to proceed against the life of our said late sovereign, and in pursuance of that our late sovereign was brought to his death. These things are alledged in the Indictment as several overt-acts, to shew the treason of his heart, which was the compassing and imagining the death of the king ; compassing and imagining are the words of the statute ; the rest of the Indictment is but as so many overt-acts, evidences and manifestations of that corrupt and wicked heart of his, by which he first thought such a thought against his sovereign. The manner of our evidence shall be this : Before they could come to accomplish this damnable design, it was necessary to meet in a traitorous assembly, which they called the High Court of Justice, that under the pageantry and mockery of that, they might pretend to murder him by a sentence ; and before that assembly could come to sit, there was a precept set forth very formally to summon them to sit. This prisoner at the bar is one of those persons, who under his hand and seal did summon that Court to sit upon the life of our late sovereign. When the Court, in obedience to that summons, as they called it, did meet, they sate several times, and he among them ; they did proceed with a wonderful impudence, as they had begun, to pronounce sentence of death upon our late sovereign ; my lords, this prisoner at the bar was amongst them, and was at that Court, and gave the sentence. When they had done, that they might complete their villainy, they made a Bloody Warrant for severing the head of his late majesty from his body, and the hand of the prisoner is to that Warrant also ; and this is the scope of our Indictment.

*Scroop.* My lords, may I have liberty to speak ?

*Court.* If you do confess that which is opened in evidence against you, we shall not need to examine any witnesses.

*Scroop.* Examine what you think fit. If I understand that worthy gentleman that spoke last, he said that my hand was to the warrant for execution ; my lord, if I can see my hand I can tell, and I will not deny my hand.

*Court.* Shew it him : (which was done accordingly.)

*Scroop.* My lords, I will not deny but that it is my hand, but it is not my seal.

*Counsel.* Crier, call Mr. Masterson, Mr. Kirke, Mr. Clarke, Mr. Carr ; who were all sworn.—Mr. Masterson, pray tell my lords and the jury whether you did see the prisoner at the bar in that which they called the High

Court of Justice, sitting as judge upon the late king.

*Masterson.* My lords, and gentlemen of the jury, I saw upon the 22d or 23d of Jan. 1649, the prisoner at the bar sitting upon the bench as one of the judges in that which they called the High Court of Justice, the king standing a prisoner at the bar ; I say either the 22d or 23d. But I say particularly upon the 27th of Jan. 1649, in which the Sentence was passed upon the late king, I saw the prisoner at the bar sitting upon the bench, in that which they called the High Court of Justice.

*Counsel.* How did he demean himself when the Sentence was read ?

*Masterson.* When the Sentence was read, it was by the President, (as he was called) of that Court, said to be the Sentence and Judgment of the whole Court, upon which the prisoner at the bar rose up, as to my apprehension, testifying his assent. All their assents were taken so, and no otherwise, to us that were as spectators.

*Scroop.* I beseech your lordships that I may speak without offence and answer to this.

*Court.* Mr. Scroop, you may please to have paper, and pens, and ink, to take notes, or to ask any questions.

*Scroop.* My lords, give me leave to ask him this question : whereabouts did he see me sit in the Court ?

*Court.* Mr. Masterson, you hear the question, pray answer to it.

*Masterson.* My lords, I cannot particularly say where he sat, but I saw him in the Court, and to the best of my remembrance it was on the second seat on the left-hand of Bradshaw.

*Scroop.* I would not give offence to the Court in any kind ; I am now pleading for my life. I desire to take a little liberty to ask this gentleman if ever he and I were in company together, that he knows me so well.

*Masterson.* For my part I do not remember I saw his face before the sitting of that Court : if this gentleman ask me if I were ever in his company, I know not how I may construe the word company ; but I am sure I never eat nor drank with him ; I have seen him very many times at committees, more than twenty times since that business.

*Mr. Clark called.*

*Counsel.* Mr. Clark, you have heard the question, did you ever see the prisoner at the bar in that which they called the High Court of Justice ?

*Clark.* I do remember in the year 1649, I saw the prisoner sitting in that which they called the High Court of Justice upon the trial of the king.

*Scroop.* My lords, you may desist in examining witnesses touching my sitting.

*Court.* Do you acknowledge you did sit in that which they called the High Court of Justice ?

*Scroop.* Yes, I see it proved, and I see a gentleman here, in my eyes that I know very well. I will not deny it.

*Court.* Did you sit upon the Sentence-day, that is the evidence, which was the 27th of January? You are not bound to answer me, but if you will not, we must prove it. Do you confess that?

*Scroop.* I do not confess that I stood up as assenting to the Sentence.

*Mr. Clark* called.

*Counsel.* Mr. Clark, what say you to that?

*Clark.* I did not take particular notice of him that day, that he stood up; but the whole Court stood up, to my apprehension, but I took notice that he was there then present.

*Counsel.* Mr. Clark, do you remember that you saw any of them sit?

*Clark.* I did not take notice of any that sate then, but all stood up, to my thoughts.

*Mr. Carr* called.

*Counsel.* Mr. Carr, Tell my lords and the jury whether you did see the prisoner at the bar sitting in that which they called the High Court of Justice.

*Carr.* My lords, and gentlemen of the jury, the 22d, 23d, and 27th of January 1649 I was present when the names of that they called the High Court of Justice were called, and amongst others that were judges of that Court, as was printed in a Paper, which I then had in my hand, I found the name of Mr. A. Scroop, who I saw did there sit and appear. [Mr. Carr looked in that paper when he gave his evidence.]

*Scroop.* I hope you will not take any evidence from a printed list.

*Counsel.* The manner of his evidence is, he saith, this: that he had this printed paper in his hand when the names of that Court were called, and marking the persons in that paper who were present, and that you were one of them who did appear.

*Scroop.* My lord, I shall not dispute, in regard of my want of skill in the law, the lawfulness of bringing in any Paper in evidence into the Court, I shall not dispute against your lordships; but by your favour, I do suppose there is no witness ought to use any paper, or look upon any paper when he gives evidence; but I shall submit it to your lordships.

*Sol. Gen.* Ask him the question without his paper; but yet nothing is more usual than for a witness to make use of a paper to help his memory.

*Scroop.* The gentleman that spake last I cannot hear him.

*Sol. Gen.* We do not need his paper in this case, he will tell it without a paper; Mr. Carr, speak without a paper.

*Carr.* My lords, upon the calling of those that were Judges in that court which they called the High Court of Justice then sitting, this gentleman the prisoner at the bar did answer to his name then called.

*Scroop.* Did you see me?

*Carr.* I heard you answer, and saw you.

*Scroop.* I pray he may be asked whereabout I sate in that court.

*Counsel.* Mr. Carr, you hear the question, answer to it.

*Carr.* I am not able particularly to tell now, it being many years since.

*Scroop.* My lord, observe of what value this evidence is; I am sure I never was in his company, I do not know that ever he saw me in his life; I beseech you give me leave to plead for myself in all humbleness and modesty, my lord.

*L. C. Baron.* Notice is taken of it, Mr. Scroop, God forbid you should be debarred of it.

*Scroop.* I say he comes with evidence of a paper, he heard my name called, and marked it: it is strange that a gentleman whom I never saw, I know not his name, nor do I think he knew my name if he had met me.

*L. C. Baron.* I told you that was laid aside, and you heard him speak *viva voce* without a paper.

*Counsel.* Mr. Kirk, did you see the prisoner at the bar in that court which they called the High Court of Justice for trial of the late king?

*Kirk.* My lords, and gentlemen of the jury, I did see the prisoner there, and I did wonder to see him there, which was the reason I took the more special notice of his being there.

*Scroop.* Pray, my lord, let me intreat one thing before he speaks, that your lordships will be pleased to speak to him to give in his evidence without any speech.

*Counsel.* How can that be? Can he give evidence without speaking?

*Scroop.* I beseech you, my lords, give me leave to say this, Let him give in his evidence in plain words without any speech.

*L. C. Baron.* Mr. Scroop, he must be excused; there are circumstances inducing which are as much as the principal; this that he hath said is very material; saith he, 'I did see the prisoner at the bar there; I did not expect it, and wondered at it, and therefore took the more notice.' Let him go on, ask him what question you will.

*Scroop.* My lord, I submit.

*L. C. Baron.* Mr. Kirk, you must speak the truth, and the whole truth; go on.

*Kirk.* I say as I said before, I saw this gentleman sitting in that which they called the High Court of Justice, and I did therefore wonder at it, because I did not expect him there. I came to know him formerly as he was called captain Scroop.

*Council.* Go on.

*Kirk.* And, as I said before, I saw this person, this prisoner at the bar, sit amongst the rest of those persons, judges, as they called themselves, of the High Court of Justice for the Trial of the King; I did more particularly take notice of this person, because I did not expect him there: I knew him formerly upon this report, being an eminent man, by the name of captain Scroop, and at that time was an associate of one captain Vivers, and captain

Wingham; I had not seen him some years before this business, and seeing of him there, I did the more particularly take notice of him.

*Scroop.* Have you done, Sir? I beseech your lordship ask him what employment he had there himself when he saw me there.

*Kirk.* My lord, I was there to hear the trial.

*L. C. Baron.* Mr. Scroop, I am not willing you should have any thing of interruption, unless you reflect upon any person that concerns you. Mr. Scroop, do not think it will be for your advantage, nor is it proper for you to ask.

*Scroop.* In all humbleness I do speak it to your lordships, that your lordship will please to consider, that if he had any employment in that business himself, how unfit a witness he is against me.

*Court.* Much fitter.

*Scroop.* If it be so, I have done.

*Kirk.* My lord, I was there only as a spectator, I went only there to see and hear what was there to be seen and heard; I stood there and took notes in characters of the proceedings, and several others with myself did the like, and we compared them together, that was all my business at that time, and I saw him sit there the 27th day of Jan. 1649, which was the day of Sentence against the King.

*Scroop.* Whereabouts did you see me sit there?

*Kirk.* It is not, I think, imaginable that any person should be able after so many years possibly to say where any person sat; but to the best of my remembrance you sate upon the second bench next the President. But I dare not be positive in that, I dare not justify it upon my oath, it is but my remembrance.

[Here Mr. Scroop talked to one that stood near him.]

*L. C. Baron.* We must desire that of you, Mr. Scroop, that you will not speak to any here but what the Court may hear.

*Scroop.* I shall observe your commands.

*Mr. Coytmore* sworn.

*Counsel.* Did you see the prisoner at the bar sitting in that which they called the High-Court of Justice as a Judge upon the King?

*Coyt.* I did see him.

*Counsel.* When? What day?

*Coyt.* I cannot name the day: I was there three days of their sitting, there I saw him once or twice; once I am sure.

*Scroop.* What day?

*Coyt.* I cannot remember.

*Counsel.* Did he sit there as a Judge upon the King?

*Coyt.* He sate among the rest as a Judge.

*Scroop.* Give me leave to ask whereabouts he saw me sit?

*Counsel.* Where did you see him sit?

*Coyt.* I cannot remember the place, he was among them; I saw him either one or two days; there was a great company of them together.

VOL. V.

*Counsel.* Mr. Nutley, did you see the prisoner at the bar sitting in that which they called the High-Court of Justice?

*Nut.* If it please your lordships, I was there in the Court those four several days that they sate in Judgment. I heard the prisoner at the bar called by his name. I did take notice he was there, truly I think he was there twice or thrice, to my remembrance.

*Counsel.* Can you tell what day, whether the 27th of Jan. 1649?

*Nut.* I cannot say positively, but to the best of my remembrance he was there; that was the last day when Judgment was given.

*Mr. Baker* sworn.

*Counsel.* Mr. Baker, what say you? Did you see the prisoner at the bar sitting in that which they called the High-Court of Justice?

*Baker.* Yes, I did see col. Scroop on Tuesday the 23d of Jan. 1649, very particularly stand up and answer to his name.

*Counsel.* Mr. Coytmore, are you acquainted with col. Scroop's hand?

*Coyt.* I have had several letters from him.

*Counsel.* Mr. Scroop, have you a mind to see the Warrant for summoning the Court?

*Scroop.* I desire to see it; I do not remember I set my hand to it.

*Court.* Shew it him. [It being shewed him]

*Scroop.* I cannot say it is my hand.

*Counsel.* It is too true: we shall prove it to you?

*Court.* Shew it to Mr. Coytmore.

*Scroop.* Be pleased to let me see it once more:—Which was again shewed him:—Truly, my lord, I will save him the labour.

*Counsel.* You do acknowledge it was your hand?

*Scroop.* I will save him the labour; for I confess, I do not love men should be put to their oaths more than needs.

[Here likewise the Warrant for Execution was read.]

*Counsel.* My lords, we shall conclude our evidence with major-general Brown, the Lord Mayor Elect.

*The Lord Mayor Elect* sworn.

*Counsel.* My lord, be pleased to tell my lords what discourse hath lately passed between the prisoner at the bar and you concerning the death of the King.

*Lord Mayor Elect.* My lords, upon some occasion I was accidentally at the chamber of the Speaker, there I met this gentleman, whom indeed I knew not; he told me who he was; and when I understood who he was, I said to him (or words to this purpose, I cannot tell the words), because I would not distaste him, and say you have done this, therefore I put it thus, we have done this, What a sad case have we, said I, brought this kingdom unto! 'Why,' saith he? You see, said I, how it is ruined

now the King is murdered, &c. Saith he, 'Some are of one opinion, and some of another.' Sir, said I, do you think it was well done to murder the King? Saith he, 'I will not make you my confessor, Sir;' it was much to this purpose.

*Counsel.* When was this spoken?

*Lord Mayor Elect.* Truly I do not know the day, but it was that day that sir H. M. rendered himself to the Speaker; it was since the coming in of the King.

*Sol. Gen.* Neither time nor the hand of God appearing in this business, nor the condition he was in, was ever able to bring this gentleman to be sorry for his offence; but we do not give it as any evidence of his crimes: You have heard the prisoner confess the two Warrants: You have heard by several witnesses produced, that he did sit in that which they called the High-Court of Justice, by three that he sat particularly on that day they called the day of their Judgment; you have heard how little penitence he hath had, by his declaration to the Lord Mayor Elect.

*Scroop.* I hope now that you have heard the evidence against me, that you will give me leave to make some defence for myself.

*L. C. Baron.* God forbid otherwise but that you should have free liberty.

*Scroop.* Truly, my lords, though my breeding hath not been in the way of the laws, and therefore I have a great disadvantage when there be such learned gentlemen as these are to plead against me, I must confess to you I have something for matter of law to plead for the justification of the fact, though I would not undertake to justify the person; this I humbly intreat, if it may be granted, that I may have some time given me, and some counsel, that I may answer matter of law.

*L. C. Baron.* Mr. Scroop, if you have any thing of matter of law for which you would have counsel, you must alledge that matter first; the use of counsel is only to put it in certainty what you have of matter of law, and then the Court and Judges must judge of it. If you have matter of law, you must tell what it is; if it be matter that there is cause to over-rule it, there is no cause of making further use of counsel. If one be indicted for murder, when he comes to trial he will say, I have matter of law to plead; what is that? That murder is no felony: Do you think counsel will be admitted in this? If you do alledge what this matter is wherein you desire counsel, you shall have your answer.

*Scroop.* My lords, as well as I am able to do it I shall do it; my lord, I was not in the Parliament; take notice of that; and that which was done in the High Court of Justice, it was done by a Commission from the Parliament. My lord, it was that authority, which was then, I will not say it was so, because I would not give offence; it was that authority which was then accounted the Supreme Authority of the nation; and that authority, my lord, that a great many of the generality of the nation sub-

mitted to. My lord, I having received a command from that authority, what I did was in obedience to that authority: My lord, I have not had time to consider of these things, because I have been for these six weeks time shut up a close prisoner, and that I could neither come at counsel nor any thing else, nor to get any thing to prepare for it; therefore I desire your lordships to do me the favour, if you see any weight in it, to let me have time and counsel assigned me.

*L. C. Baron.* Have you done, Sir?

*Scroop.* Yes.

*L. C. Baron.* Then I take it, this is the effect of what you have said; if I have not taken it aright, tell me so: You say you justify the fact, though not your person; that you were not of the Parliament; that what was done was by Commission from the Parliament; Be pleased not to mistake me, for I say you said this: 'That that which I have to plead in justification of it, I do not say that I justify myself, but that which I have to say is for justification of the fact: I was, first, no contriver of the business; and then, secondly, I did it by virtue of the command, and in obedience to the authority of the Parliament: That that authority was then accounted the supreme authority of the nations, and that the generality of the nations did submit to their authority;' I think I have repeated all you have said. Then, Mr. Scroop, you must know this, that there is no cause at all why counsel should be given for what you speak; I profess it rather tends to the aggravation than extenuation of what you did. First, you say you did it by authority of Parliament; I am afraid you have been mistaken as well as others; by the word Parliament, what doth that mean? I am sure you, and every one knows, that there was not one precedent ever heard of till this, that the House of Commons should take upon them the legislative power, and make such an act as this was; there was no colour for it. Then for men upon their own heads, never heard of before, and against the liberty and freedom of the people, that they should call it the Parliament, when there was but 46 sat, whereas there was above 240 excluded; and how you can call this a House of Commons is a great wonder to me; but I tell you this, take it for granted, that if they were the most perfect House of Commons that could be, did ever the House of Commons before this single act, take upon them the legislative power without the Lords? The Acts are begun in the Commons House; when they have done, if the Lords do not pass it, it is abortive; if it be done by both Houses, there ought to be a Royal Assent: But the Lords had rejected this Act; then they must take upon them, these 46 men, whereof I do believe there was not above 25 or 26 men that did vote this, and this must be called the Parliament, the Commons of England. I would fain know whether any man hath heard that the House of Commons took upon them the legislative power before this Act; but this hath been over-ruled in the like case,

and I shall say no more to it. What is the Oath of Allegiance? Is it not that you would defend the King, his crown, rights and liberties, against all persons whatsoever? It was not only against the Pope (as some would have it), but the word is, 'or otherwise.' They broke the Oath of Supremacy, which was, 'That the King was Supreme Governor of these nations.' They swore that they would maintain and keep all privileges, immunities, pre-eminences, annexed to the Imperial crown of this realm; there is difference between some crowns and Imperial crowns: An Imperial crown, it was that which was not to be touched in the person: We do not speak any thing of the absolute power of the King, for you see he cannot judge concerning the death of his father, but by laws. When you swore this allegiance, all those members to break this at once, this would be so far from having any colour of authority, that he that justifies it, justifies it against the light of the conscience and laws. You say you did it by commandment from them; he that doth a command by such an authority, it is his guilt; our Law Books say, That if a Court at Common Law exceed their jurisdiction, in that case he that obeys that command is punishable. In the Court of Common Pleas, if there be an appeal there for murder, it is only proper to the Upper Bench; and therefore if the party be condemned, sentenced, and executed thereupon, the executioner in that case is guilty of murder for obeying that authority, which was indeed no authority: and therefore whereas you would go about to justify the fact, because you did it by command of that authority, that is an aggravation: That when men shall assume an authority which is a devil at the noon day, appearing without vizards; I say, shall assume an authority never heard of before; if men will countenance their acts by obeying them, it is an aggravation: We have already declared this in the case of the prisoner yesterday; we are all satisfied in the law in that case: it is so clear a point in law, that my brethren here and we did over-rule it yesterday in the like case, and so we must now; and I hope that all do concur in this opinion that hath been delivered.

*Lord Finch.* I hope all do concur in this opinion delivered by my Lord Chief Baron. You shelter yourself under a command of the House of Commons; but let me tell you, and all the world, That if the House of Commons (let it have been never so complete) had given a command, it had been a thing no ways justifiable; the justification is an aggravation.

*Scroop.* My lord, I do see that every thing I speak, though it be for clearing of myself from your ill opinion, I see it is taken in an ill sense (I humbly beseech pardon for the expression); if I err, I will crave your lordship's pardon; but, my lord, I say this, if I have been mis-led, I am not a single person that have been mis-led. My lord, I could say (but I think it doth not become me to say so), That I see a great many faces at this time that were mis-led as well as myself, but that I will not insist upon: I say

this, That I hope an error in judgment shall not be accounted malice, or an error of the will: Truly, my lord, I never went to the work with a malicious heart; I humbly desire your lordships to take notice of it, that I never bore any malice at all against his late majesty.

*L. C. Baron.* Mr. Scroop, have you done?

*Scroop.* My lord, I do beseech your lordships to take notice, that an error in judgment is not an error in the will.

*L. C. Baron.* Mr. Scroop, I am very glad to hear you say so: but let me tell you what the law saith; the law in this case cures the malice. If a man do an act of this nature, that may be some kind of excuse to God, but towards man you are to look to the fact, the law implies the malice. If there be any thing you will say in the extenuation of your offence, we will be very glad to hear that may tend to your help.

*Scroop.* My lord, there is one evidence comes in against me that I must confess I am very sorry to see; and, my lord, there was a saying, and it is by my Lord Mayor Elect: Truly he is a worthy gentleman, but I desire the Lord may forgive that which he hath spoken. Truly, my lord, I did never intend any thing in this, neither can I directly remember that I spake those words directly, as my Lord Mayor Elect doth speak; I do believe my Lord Mayor cannot very well remember them himself; for he saith, so far as he can remember; I must confess that when I was there, and had appeared according to the Proclamation, that such discourse somewhat like it was raised, not of my procuring; I did not procure the discourse; I never intended the justification of the fact; but it was my ill success that I should meet with that worthy gentleman to have so much discourse with him.

*L. C. Baron.* Mr. Scroop, my Lord Mayor Elect saith no more than this, 'so far as he remembers,' and the words that you should say were these, 'That some are of one opinion, and some are of another.'

*Scroop.* Upon the death of the king, my lord, I must confess to you, that somewhat I said to him, but I cannot own that I said those words. My lords, He is a worthy person, I do not desire to speak any thing to degenerate in the least kind from him; it is but his Yea, and my No; there was no body there.

*L. C. Baron.* Have you any thing more to say for yourself?

*Scroop.* My lord, if your lordships do over-rule it so that I may not have Counsel, I have little more to say.

*L. C. Baron.* You have heard the sense of the Court in that particular, you cannot have Counsel allowed you as to the matter you have pleaded.

*Scroop.* I have done; but only this, my lords, I know not whether it be reasonable to mention it; I came in upon the Proclamation; and, my lords, by means of these unhappy words that have been reported of me in the House of Commons, whereas before I was no

excepted person, I came to be excepted, and upon the very last day of passing that act, never was excepted before the very last day: I beseech you take notice of this.

*L. C. Baron.* Mr. Scroop, That is a thing that is not before us, but there will be a proper time to consider of it in another place; that is nothing to the trial; have you any more to say, Sir?

*Scroop.* No, my lord; will your lordship please to let me speak a word to the Jury?

*L. C. Baron.* If you speak to the Court the jury will hear it.

*Scroop.* Truly, my lord, this I do perceive, that I am under a very great prejudice as to this fact. It hath been the case of many gentlemen besides myself; I desire that these gentlemen would take my case into consideration, as they would their own, and I desire that the Lord would give them direction that they may do that which is according to justice and mercy; that is all that I have to say, my lords.

*L. C. Baron.* You gentlemen that are sworn of this jury, you see the prisoner, Mr. Scroop, hath been indicted for imagining and contriving the death of his late majesty, of blessed memory, king Charles the first. You see there are several things in this indictment; the Charge is the imagining and compassing the death of the king. In the indictment there are several matters of fact to prove this imagination. The imagination is the treason, the matters of fact to prove it are but the evidences of that imagination; if any one of them be proved to you, it is sufficient; the one is consulting and meeting together how to put him to death, the other sitting and assuming authority to bring him to trial. Then you have a sentence by the Court to put the king to death thereupon; afterwards he was put to death. Any one of these matters are evidence enough for you to prove the Indictment; for though the Indictment concludes that so they did imagine and compass the death of the king, and that the king was put to death in manner and form as aforesaid; the manner and form aforesaid goes to this, to the imagination of the heart; for the law did not think any one would put the king to death, they thought it so a crime, they thought it not convenient to bring it into the statute. But the compassing and imagining the death of the king is made treason: Then to apply it, this fact, to the gentleman, it appears to you here by the proofs against him. Here is Mr. Masterson swears he saw him sit in that pretended Court; there was your evidence of the first, the first was their meeting together; and of the second too, they did assume authority upon them; and he swears further to the sentencing. That the prisoner was there. Here were the three Overt-Acts all proved. He confesses he did sign the Warrant for putting the king to death: This, without any witness at all, was a sufficient proof, a proof of proofs. The other witnesses, you hear what they say: you hear Mr. Kirke, Mr. Clark, Mr. Nutley, swear all to his sitting there. It is true, when

this comes to the particulars where he sate, you must remember it was twelve years ago; when a man sees a mixt number of about eighty persons, it is impossible a man should be able to answer this particular after twelve years, where such a one sate; but you may see by his sentencing what he did. They all witness they saw him positively; and one tells you, 'He wondered he saw him there;' and indeed it might be a wonder; for Mr. Scroop (to give him his right) was not a person as some of the rest, but he was unhappily engaged in that bloody business, I hope mistakenly; but when it comes to so high a crime as this, men must not excuse themselves by ignorance or misguided conscience. As to God, for this horrid murder of the king, somewhat may be, but there is no excuse or extenuation before man; there may be, I say, before the Lord. You see the proof is full against this gentleman, as full as may be; witnesses saw him sit, and he himself confessed he signed the Warrants. I have no more to say to you, but, Gentlemen, you see what it is; I think for matter of fact you need not go from the bar; but I leave it to you.

*Scroop.* My lord—

*L. C. Baron.* Mr. Scroop, if you have any thing to say when the jury have brought in their Verdict, if you will say any thing for matter of mercy, the Court will hear you.

*Scroop.* I thank your lordship.

The Jury went together, and presently settled themselves in their places.

*Clerk.* Adrian Scroop, hold up thy hand. Look upon the prisoner. How say you? Is he Guilty of the treason, whereof he stands indicted and hath been arraigned, or Not Guilty?

*Jury.* Guilty.

*Clerk.* What goods and chattels, &c.

*Jury.* None that we know.

*L. C. Baron.* If you will say any thing, the Court will hear you.

*Scroop.* I have no more, my lord, but refer myself to this honourable Court.\*

#### TRIAL OF JOHN CAREW.

October 12, 1660.

*Clerk.* Set John Carew, Tho. Scot, John Jones, and Gregory Clement to the bar; who were set accordingly; and being commanded, they severally held up their hands.

*Clerk.* These men that were last called, &c. Sir Thomas Allen lay your hand on the book: Look, &c.

*Carew.* I challenge him.

*L. C. Baron.* Are you all agreed as to your challenges?

*Prisoner.* No, my lord.

*L. C. Baron.* Then we must do as before, sever you, and go to trial severally: Take

\* See the particulars of his Behaviour and Execution, *infra*.

the three away, and let Mr. Carew stand at the bar.\*

Challenged, Charles Pitfield,——Wille, Will. Smith, Rich. Rider, Edward Ralph, James

\* “Mr. John Carew was a gentleman of an ancient family in the county of Cornwall, educated in one of the universities, and at the Inns of Court. He had a plentiful estate; and being chosen to serve in the great parliament, he was elected into the Council of State, and employed in many important affairs; in which he shewed great ability. He found the same usage from the Court as maj. gen. Harrison had done; being frequently interrupted, and counsel denied, though earnestly desired by him, in that point of law touching the authority by which\* he had acted. When he saw that all he could say was to no purpose, he frankly acknowledged, that he sat in the High Court of Justice, and had signed two warrants; one for summoning the Court in order to the king's trial, and another for his execution. Upon this the Court, who were well acquainted with the disposition of the jury, permitting him to speak, he said, that, in the year 1610, a parliament was called according to the laws and constitution of this nation; that some differences arising between the king and that parliament, the king withdrew his person from thm; upon which the lords and commons declared——Here the Court, being conscious that their cobweb-coverings were not sufficient to keep out the light of those truths he was going to produce, contrary to the liberty they had promised, interrupted him, under colour that what he was about to say, tended not only to justify the action for which he was accused, but to cast a bill of division among those who were present. But Mr Carew going on to say, The lords and commons by their declaration——Judge Foster interrupted him again, and told him, he endeavoured to revive those differences which he hoped were laid asleep, and that he did so to blow the trumpet of sedition; demanding if he had ever heard, or could produce an act of parliament made by the commons alone. To this he would have answered; but was not permitted to finish what he began to say, or hardly any one thing he endeavoured to speak in his defence during the whole trial: Mr. Arthur Annesley, particularly, charged him with the exclusion of the members in the year 1648, of which number he had been one. To which he only replied, that it seemed strange to find a man who sat as a judge on the bench, to give evidence as a witness in the Court. These irregular proceedings, unbecoming a court of judicature, obliged Mr. Carew to address himself to the jury, leaving them to judge of the legality of his trial; and appealing to their consciences, whether he had been permitted to make his defence. But they, who were not to be diverted from the resolutions they had taken, without any regard to the manner of his trial, declared him Guilty as he was accused.” 3 Ludl.

Shercroft, Thomas Uffman, Francis Beal, Will. Whitcombe, Samuel Harris, Jo. Nichol of Finchley, George Right, Thomas Fruen, Ab. Newman, Thomas Blithe, Will. Vincent, James Hawley, Chr. Abdy, Tho. Bide, John Smith, Ab. Scudamore, Ralph Halsel, John Galliard. In all 23.

*Jury sworn*, Robert Clark, Thomas Grover, Richard Whaley, Samuel Greenhil, Nicholas Raynton, Thomas Winter, Richard Cheney, John Kerk, Richard Abel, Thomas Morris, George Terray, Thomas Swallow; in all 12.

If any man can inform my lords the king's justices, &c.

*Clerk.* John Carew, hold up thy hand.

You that are sworn look upon the prisoner: You shall understand, &c.

*Sir Edward Turner.* May it please your lordships, our hue and cry still proceeds against the murderers of our late sovereign lord king Charles the first of blessed memory, and this gentleman the prisoner at the bar is apprehended as one among others for shedding that precious blood. Gentlemen of the jury, he stands indicted before you, for that he, I cannot express it better, not having the fear of God before his eyes, but being seduced by the instigation of the devil, he did imagine and compass the death of his said late majesty. In prosecution of this, gentlemen, there be several things that are mentioned in the Indictment, which are the open acts to discover to you these secret, and private imaginations. He dismeets and consult with divers persons touching the death of the king, that did usurp and take upon them to exercise a power and jurisdiction to try the king; and finally, most horribly put him to death. The treason by the statute of 25 Ed. 3, and which you are to enquire of, is, the imagining and compassing the death of the king; the rest of the Indictment are but particulars to prove that he did so imagine and compass the death of the king. If we shall prove these, or any of these facts, you have then sufficient to convict him. There was a thing they called a High Court of Justice, that was set up, wherein they did pretend to try our late sovereign lord, and a precept made, and that under the hand and seal of the prisoner at the bar, amongst others, for summoning and convening that bloody Court, where, among the rest of the miscreants, the prisoner at the bar did sit, and had confidence, nay impudence, to pronounce Judgment against his sovereign. In this he rested not, but he, among them, set his hand and seal to that bloody roll or warrant for putting him to death, which accordingly was done; and to these several open acts we shall call our witnessses, and so proceed.

*Mr. Masterson, Mr. Clark, and Mr. Kirk, sworn.*

*Counsel.* Mr. Masterson, look upon the prisoner, did you see him sit in that they called the High Court of Justice?

*L. C. Baron.* Mr. Carew, if you will have

pen, ink, and paper, you may have it, pray call for it.

*Carew.* I have no need of it.

*Counsel.* Mr. Masterson, did you see, &c.

*Masterson.* My lords, and gentlemen of the jury, I was present at that assembly, which they called the High Court of Justice for trial of the king, upon the 22d, 23d, and 27th of January 1649, and there I saw the king stand a prisoner at the bar. I saw this gentleman, the prisoner at the bar, sit upon the bench in that Court, as one of his majesty's judges; particularly upon the 27th of January, which was the day of sentence, I saw him sitting there.

*Counsel.* Mr. Clark, you hear the question; do you remember that you saw the prisoner at the bar sitting in that which they called the High Court of Justice?

*Clark.* I remember I saw the prisoner at the bar sitting in that which they called the High Court of Justice for the trial of the late king, and particularly I took notice upon the 23d and 27th of Jan. 1649, that he was present.

*Counsel.* What was done upon the 27th day?

*Clark.* The 27th day the late king was sentenced to death.

*Jury.* What is your name, Sir?

*Counsel.* His name is William Clark.

*Counsel.* Mr. Kirk, what say you to the former question touching the prisoner, his being at that which they called the High Court of Justice?

*Kirk.* My lords, and gentlemen of the jury, I was present at the trial of his late Majesty of blessed memory. I saw that gentleman, the prisoner at the bar, several days there, particularly the day of the sentence, which was the 27th day of January, 1649; when the sentence was passed he rose up, assenting to it. [Then the Warrant for summoning that pretended Court was shewed to Mr. Kirk.]

*Counsel.* Do you believe that hand to be the hand of Mr. Jo. Carew, prisoner at the bar?

*Kirk.* My lords, I do believe it to be his hand; I have seen his hand to several orders, and being very well acquainted with his hand-writing, I believe it to be his hand as much as any man can possibly know another man's hand.

[Then the Warrant for Execution of the King was likewise shewn him.]

*Counsel.* Is that the hand also of the prisoner at the bar?

*Kirk.* It is the same hand, my lord.

*Court.* Was Mr. Carew a member of the Long Parliament?

*Kirk.* Yes, my lord.

*Counsel.* Had you occasion to be acquainted with his hand?

*Kirk.* My lord, I have seen him set his hand several times to orders and other papers.

*Mr. Farrington sworn.*

*Counsel.* Do you know (the Warrants being shewn him) those hands to be the writing of the prisoner at the bar?

*Far.* My lords, really I believe these are his hand.

*Court.* Are you acquainted with his hand?

*Far.* Yes, my lord, and I do believe these to be his hand-writing. I did not see him write them, but so far as possibly a man can know another's writing I do believe these to be his.

*Court.* If you will ask to see them, you may see them, Mr. Carew.

*Carew.* Please you to go on.—Here they were both read.

*Counsel.* May it please your lordships, we shall not need to trouble the jury any further: we have proved that the prisoner did sign that Warrant for summoning that Court of Injustice, that he sate there and sentenced the king to death among others, and that he signed the Warrant for execution.

*L. C. Baron.* Mr. Carew, you have heard the evidence; you may please to speak what you think fit for yourself.

*Carew.* My lords, the crimes that are here laid to my charge in this indictment are Treason and Murder.

*L. C. Baron.* I would not have you to be mis-informed, it is Treason only, but it carries the other in with it, Murder.

*Carew.* Because you say it carries the other inclusively.

*L. C. Baron.* It doth; the charge is the compassing and imagining the death of the King, the other is but evidence.

*Carew.* Then the thing that I stand upon before the Lord, and before you all, I say before the Lord, before whom we must all stand, and give an account of this action, which is a very great and weighty one: And whereas it is charged there, (for I shall not trouble you with many words as to the particulars, or as to the proofs, but I shall ingenuously acknowledge what the truth is, and how far I can believe it;) and therefore I say, as to the beginning of what was charged by the Counsel, and according to the course of the indictment, that what was done in those things, that it was not having the fear of God before mine eyes, but being moved by the Devil, and that it was done with a traitorous, malicious and devilish heart, and all those things mentioned in the indictment: as for that, I can say in the presence of the Lord, who is the searcher of all hearts, that what I did was in his fear, and I did it in obedience to his holy and righteous laws.

[Here the people hummed.]

*L. C. Baron.* Go on. He stands for his life, let him have liberty.

*Carew.* It is part of my charge not to have the fear of God, &c. I did such and such things. I hope I may have liberty.

*L. C. Baron.* Go on, you shall not be interrupted.

*Carew.* I say, that I did it in the fear of the Lord, and I will begin with that, and confess ingenuously the truth of it. When this came in question, there was an Ordinance brought in to try the king, where my name was not as one



of the judges. There was another afterwards, an act which I shall mention upon what ground by and by, what that was, and that act was brought in and committed, and names brought in, and my name was not brought in, and so afterwards my name was put in, and seeing it I did strike it out. After the committee was up, I told them I did desire to be excused in such a business. I have told you, how, wherein, and the ground that I did it, which I shall leave with the Lord, in whose hands your and my breath, and all our breaths, are; and therefore when it was so, I did, because of the weight of it, as being a very great and special thing, and so I was very unwilling, because of there being enow, which I thought had more experience every way for so great a concernment as that was, to be employed rather than I; yet being satisfied with that authority that did it, this is to shew you how that I had the fear of the Lord, and did weigh the things: after that when the Bill was brought into the house, my name was put in there with several others, so I came to be in; and what I did was upon these two accounts: First, in obedience, as I told you, to the Lord, which was the chief thing, and in obedience to that which was then the Supreme Authority of this nation: and therefore I shall mention these grounds very briefly, because indeed the things that are controverted here at this time, they have been controverted in the face of the whole world in several nations; and the Lord hath given an answer upon solemn appeals to these things; I shall therefore mention them very briefly, because they have been so public. The Declarations and Remonstrances that have passed between the king and parliament concerning the beginning of the wars—

*Lord Chief Baron.* Mr. Carew, I would be very loth to interrupt you, but I see what course is taken, and the people's eyes are upon you: You seek delay, and against the course of prisoners: You say you will confess, but you do not confess the fact, after you have spent all this time; and all the witnesses are heard for this that you speak of now; if you go about to justify 'as in the fear of the Lord,' or any thing of that nature, that we cannot allow of; but we do allow you to speak and give the heads of what you will say as to the matter of fact; but to hear you make discourses and debates which are a justification of a horrid and notorious treason, we cannot hear it; we ought not to hear the maintaining of open treason; cannot hear you to speak that upon your opening, which is treason: We are willing that you open the heads what you have to say; we are upon our consciences, and to appear before God for what we do, and so are you too; but remember, the devil sometimes appears in the habit of an angel of light. If you will couch your matter in a few words, the court affords you liberty, which is indeed beyond the strict rules of law.

*Carew.* You say you sit here by the laws of the land, and are sworn to maintain the laws. We ought not, that we should plead to

this Indictment, for what we did was by an act of Parliament.

*Court.* Pray, Sir, this must not be let fall without reproof or rather punishment.

*Carew.* I believe there is no precedent for it.

*Court.* Sir, we know the act of Parliament as well as you, and most of the standers-by: You go upon a false ground, there was no such act of the Supreme Authority as you pretend to; these are but phantasms of your own brain, and must not be suffered; these things have been controverted and decided many a time again and again.

*Carew.* I desire to have time to speak how it was begun and carried on, or else how shall I be able to make my defence, or to tell you what are the heads I will insist upon: I shall declare the grounds upon which the Parliament did proceed.

*L. C. Baron.* Mr. Carew, If that be your ground, the Parliament did it, the house of Commons did it, 'I have something to offer' (not to interrupt you) to the then Commons—

*Carew.* In my humble opinion for the maintaining of this, it was by authority, the Supreme Authority, by which it was done,

*L. C. Baron.* Did you sign this Warrant for the summoning and warning of that Court? And did you sign the Warrant for executing the late king?

*Carew.* I desire I may go on with my defence.

*L. C. Baron.* We would not have you be mistaken: You seem to confess the act, and now you justify it; you cannot speak any thing for your justification till you confess the fact.

*Carew.* I shall speak to that in its time.

*L. C. Baron.* You must speak to that first, that is matter of fact, whereupon the jury are to go.

*Carew.* There is matter of law.

*Court.* You must speak to matter of fact first.

*Carew.* I say, this that I was about to say, That the Supreme Authority—

*Court.* You must speak to the fact first, Whether you did compass, &c. the king's death, or not? That is the first ground; if you did not, there is an end of the business: It is proved against you that you did it; if you come to justify it, it must be when you have first agreed the matter of fact.

*Carew.* I desire I may have liberty to proceed, either for matter of fact, or law, as I list.

*Court.* No, no, you must first speak to the fact; you may be after heard. You know in all cases they must begin with the fact, either denying or extenuating; for matter of law in this case must arise from the fact.

*Carew.* But I humbly conceive there is a matter of law in this case, and it is matter of law that is above the jurisdiction of this inferior court.

*Mr. Sol. Finch.* I pray that he may be held to the issue, Guilty, or Not Guilty: if he deny the fact, let us rely upon our evidence, and he upon his; he cannot come to law till he hath confessed the fact. The question is, Whether you did, or not? There is the fact; if you have any thing to justify, that follows.

*Carew.* I was upon that, and going on to shew the reasons and grounds of it.

*Court.* First you must confess it, if you will shew the reasons why you did it.

*Carew.* I told you there was some things I did.

*Court.* What are those some?

*Carew.* I do acknowledge that I was there at the court.

*Counsel.* Did you sign the Warrants for summoning that court, and for execution of the king?

*Carew.* Yes, I did sign them both.

*Counsel.* Then say what you will.

*L. C. Baron.* Now go on.

*Carew.* In the year 1640, there was a Parliament called according to the laws and constitutions of this nation, and after that there was some difference between the King and the Parliament, the two Houses of Parliament, Lords, and Commons, and thereupon the King did withdraw from the two houses of Parliament, as appears by their own declaration, The Great Remonstrance, printed in 1642; and thereupon the Lords and Commons did declare—

*L. C. Baron.* Mr. Carew, the Court are of opinion not to suffer you to go on in this; they say it tends not only to justify your act, but you cast in bones here to make some difference. You talk of the Lords and Commons; you have nothing to do with that business; your authority that you pretend to was an act of Parliament (as they called themselves), and that where there was but 46 commons in the house, and but 26 voted it.

*Carew.* I say, that the Lords and Commons, by their Declaration—

*Mr. Justice Foster.* Hold your hand awhile, Sir, not so fast; you go to raise up those differences which I hope are asleep; new troubles, to revive those things which by the grace of God are extinct; you are not to be suffered in this; it is not the singling out of a few persons that makes a Parliament. We see as before, so still, it is your course to blow the trumpet of sedition. Did you ever hear, or can you produce instances of an act of Parliament made by the house of Commons alone? though this was not the house of Commons, as you have heard before.

*Carew.* Neither was there ever such a war, or such a precedent.

*Court.* Nor we hope never will be: Pray remember, you were returned to serve in the house; what was that Writ that summoned your appearance? You had no manner of ground in the world to go that way that you did.

*Counsel.* We pray that the prisoner at the

bar give us patience a little to repeat that to him which your lordships have been so often troubled with declaring; this is not the first or second time that in this public assembly it hath been said, That neither the Lords nor the Commons, jointly nor severally, have any power at all to proceed upon the person of the King; that it is not in their power to condemn any man in England without the good pleasure of the King, much less the King himself; and that this is the great liberty of the people of England that it should be so; and it was the first breach and invasion of our liberty that that first Parliament made, and which you justify in the name of the Lord. In this case to throw us upon debates of the war, and to talk here of the causes and reasons of that quarrel which ended in such a tragedy; for this person to come here with this confidence, and to justify it, but that he knows he cannot be in a worse condition, one would wonder it should fall from any man that hath any regard of himself. It is all one to them that perish, whether they fall by one sin, or multitudes: He makes no scruple to multiply treasons. I do beseech your lordship he may not offer as he hath begun, but that the jury may proceed.

*Court.* All the Court are of the same opinion, not to hear any thing like the former discourses.

*Carew.* I desire I may be heard; I have not compassed the death of the late king, contrived the death of the king; what I did, I did by authority.

*Court.* This is not to be heard; you have heard what hath been said to you, there could be no such authority, neither was, nor could be; but you would by a wire-lace bring it in by this. You have confessed the fact, which must be left to the Jury.

*Annesley.* I think you were present in the house of commons when that Vote passed for agreement with the king in the treaty at the Isle of Wight. You know the king having condescended to most of the desires of his parliament, there was a debate in the house, and a conclusion that they were Grounds for Peace. You know the lords and commons did resolve to agree with their king; when that was done, that would not satisfy you, and other members of the house; then you go and contrive new ways; you contrive a new-fashioned parliament, the driving away many members by power, which you could not do by the law of the land: Nay, the parliament had declared against: That which you pretend is by authority, is no authority; for few of you set up an arbitrary parliament of a few of yourselves, when you had driven away the rest: This kind of parliament gives you the authority you pretend to. You were saying that the parliament was called at first, the Lords and Commons, by the King, according to the ancient constitutions of the laws: Did such a parliament give you such authority as you pretend to? an act of parliament, as you call it, which was but an order of some of the Commons, and but a few of them; you can

have no manner of justification, and therefore your plea must be over-ruled, as yesterday it was in the like case. You are indicted upon a clear act of parliament of 25 Edw. 3, and you defend yourself upon pretence of an act of parliament, which hath been over-ruled as no act.

*Carew.* I am a stranger to many of these things which you have offered, and this is strange, you give evidence sitting as a judge.

*L. C. Baron.* You are mistaken, it is not evidence; he shews you what authority that was, an authority of 26 members; How is this evidence? Mr. Carew, if you have any thing more of fact, go on: If you have nothing but according to this kind of discourse, I am commanded to direct the Jury.

*Carew.* I am very willing to leave it with the Lord, if you will stop me that I cannot open the true nature of those things that do give me ground of satisfaction in my conscience that I did it from the Lord.

*Sol. Gen.* I do pray, for the honour of God and our king, that he may not be suffered to go on in this manner. You have been suffered to speak; you have said but little, only sedition you pretend a conscience, and the fear of the Lord, when all the world knows you did it against the law of the Lord, your own conscience, the light of nature, and the laws of the land, against the oaths you have taken of allegiance and supremacy.

*Carew.* Gentlemen of the Jury, I say I shall leave it with you. This authority I speak of is right, which was the Supreme Power; it is well known what they were.

*Counsel.* It is so indeed, many have known what they were.

*L. C. Baron.* Mr. Carew, You have been heard what, and beyond what, was fit to say in your own defence; that which you have said, the heads of it you see the whole Court hath over-ruled. To suffer you to expatiate against God and the king, by blasphemy, is not to be endured; it is suffering poison to go about to infect the people; but they know now too well the old saying, 'In Nomine Domini,' in the name of the Lord, all mischiefs have been done; that hath been an old rule. I must now give directions to the Jury.

*L. C. Baron.* Gentlemen of the Jury—

*Carew.* I have desired to speak the words of truth and soberness, but have been hindered.

*L. C. Baron.* Gentlemen of the Jury, you see the prisoner here at the bar hath been indicted of treason, and this was for compassing and imagining the death of our sovereign lord king Charles the 1st of blessed memory. This Indictment sets forth several Overt-Acts to prove this imagination, for otherwise it is secret in the heart; the fact itself, the treason itself, is the imagination of the heart: The Overt-Acts that are laid down in the Indictment to prove this, That they did consult and meet together how to put the king to death, That they did sit upon him: And thirdly, That they did sentence him to death and afterwards he died. You heard what is proved against the

gentleman, the prisoner at the bar, by several witnesses, his own confession, That he signed the Warrant for summoning and convening that Court together, whereby the king was to be brought to his trial; and that he sat at his sentence, and issued the Warrant for his execution: You saw that this gentleman did the fact, did compass and imagine the king's death. That which you are to try is this issue, being indicted for High-Treason, and pleading Not Guilty; whether this gentleman that went so far, sate upon him, condemned him, signed the Warrant for his execution, did not compass and imagine the king's death? I think you need not stir from the bar where you are, but I leave that to you.

After a very small time of consultation by the Jury amongst themselves at the bar, they agreed in a verdict.

Silence was commanded.

*Clerk.* John Carew. Hold up thy hand. Gentlemen of the Jury, look upon the prisoner: How say you? Is he Guilty of the horrid Treason wherof he stands Indicted, or Not Guilty?

*Foreman.* Guilty.

*Clerk.* What goods and chattels, &c.

*Jury.* None that we know of\*.

#### TRIAL OF THOMAS SCOT.

\* October 12, 1660.

*Clerk.* Set Thomas Scot† to the bar (which was accordingly done). Thomas Scot, Hold up

See particulars of his Behaviour and Execution *infra*.

† "Mr. Thomas Scot was on the same day brought to a trial, or rather to receive the sentence of condemnation. He was charged with sitting in the High Court of Justice at the king's trial, with signing the two warrants above mentioned, and desiring, that the following inscription might be engraved upon his monument, "Here lies Thomas Scot, who adjudged the late king to die." Divers witnesses were produced to prove these things; and among them Mr. William Lenthall, Speaker to the parliament; who though when the king entered the house of commons, and had demanded of him the five members, he knew how to answer, 'That he had neither ears to hear, eyes to see, or mouth to speak, except what the house gave,' could now appear as evidence against Mr. Scot for words spoken in parliament, which he was conscious to himself was a high breach of privilege; acquainting the court, that the person accused had justified in the house the proceedings against the king. Mr. Scot said in his defence, That whatever had been spoken in the house, ought not to be given in evidence against him, not falling under the cognisance of any inferior Court, as all men knew; that for what he had done in relation to the king, he had the authority of parliament for his justification; that the Court had no right

thy hand. These men that have been of the last Jury are to try, &c. If you will challenge all, or any of them, you must challenge them before they are sworn.

*Scot.* I desire that those men who have been of the former Jury may not be named. I know my liberty of excepting against my number.

*L. C. Baron.* Mr. Scot, That which you desire is a thing not right; the offence with one is not the same with others: I speak not but that the Court will do you all right; the Court will grant it, if you will waive your

to declare whether that authority were a parliament or not. And being demanded to produce one instance to shew that the house of commons was ever possessed of such an authority, he assured them he could produce many. But having begun with the Saxon times, he was interrupted by the Court, and told that the things of those ages were obscure. Finding he might not be permitted to proceed in that way, he took the liberty to tell them, that he could not see for what reason it was not as lawful for that house of commons which he had sat as a member, to make laws, as for the present convention, which had been called by the authority of the keepers of the liberties of England. "I had the authority of parliament, the legislative authority to justify me?"—Here the court interrupted him. But having no reasons to give, Finch said in a passion, "Sir, if you speak to this purpose again, I profess for my own part I dare not hear any more." It is a doctrine so poisonous and blasphemous, that if you proceed upon this point I shall (and I hope my lords will be of the same opinion) desire, that the jury may be immediately directed." Mr. Scot replied, "My lord, I thought you would rather have been my counsel, as I think it is the duty of your place. But in this matter I am not alone, neither is it my single opinion. Even the secluded members owned us to be a parliament; else why did they, supported by an armed force, intrude themselves contrary to the resolutions of the house, in order to procure the major vote for our dissolution?" To which Mr. Annesley answered, That if the secluded members had not appeared in parliament, and by that means put an end to all pretences, the people had not so soon arrived at their happiness. These with many other things of equal force, being said by Mr. Scot in his defence, rather to justify himself to his country, than from any hopes of consideration from those with whom he had to do; the Jury, as directed, found him 'Guilty' also.

"Mr. Scot was a gentleman, who, having been educated in the university of Cambridge, had lived privately in the country till, upon a recruit of members to serve in the parliament, he was chosen to be of their number; and in that station carried himself with such constancy and zeal for the service of the Commonwealth, that, during the interruption of the parliament by Cromwell, the country in which

he lived, as a mark of their esteem, chose him to serve them as often as there was occasion. When the parliament was a second time interrupted by the army, he held a constant correspondence with Monk for their restitution; in which he was very instrumental, as well by causing the letters he received from Monk, declaring his resolution to live and die with the parliament, to be printed and published, as by other services. He had been several times chosen a member of the Council of State. And the parliament being again restored they appointed him to be secretary to that board, and deputed him for one of the two commissioners they sent to accompany Monk in his march to London. To this gentleman Monk solemnly swore at St. Alban's, that he would be faithful to the parliament. In confidence of which, when Mr. Scot had resumed his place in the house, he undertook so largely for his integrity. But when his treachery was too manifest, he endeavoured to pass beyond the seas, and was taken by pirates; who, having plundered him, set him ashore in Hampshire; yet, by the assistance of his friends, he procured another vessel to land him in Flanders; where he was no sooner arrived, but he was seized by an agent for the king. Don Alonzo de Cardenas, then governor of the Spanish Netherlands, who had been ambassador for the king of Spain in England during the government of the Commonwealth, remembering the particular obligations he had to Mr. Scot, caused him to be set at liberty. Being freed from these dangers, and afterwards finding his name to be inserted among others of the king's judges who were required to render themselves if they expected any benefit by the act of indemnity; in confidence at least of saving his life he surrendered himself to the English agent within the time limited by the proclamation. And though he was thus ensnared, yet he was not unwilling to confirm what he had done with the testimony of his blood; which he did with the greatest demonstrations of cheerfulness and satisfaction of mind. He attempted several times to speak to the people at the place of execution, in justification of that cause for which he was to die: but those who feared nothing so much as truth, interrupted him so often, that he found himself obliged to say, 'That surely it must be a very bad or use which cannot suffer the words of a dying man.'

challenges; but if you mean those that have been by others, challenged, it is against law.

*Scot.* I am willing to bring myself upon my trial, and I will take the ordinary way of excepting and challenging.

Sir Hen. Worth, sir Jer. Whichcote, James Hawley, Rich. Rider, Fra. Beale, Chr. Abdy, Nicho. Raynton, Tho. Winter, John Kirke, Rich. Abel, sir Tho. Aleyn, Abr. Scudamore, Ralph Halsall, George Tirrey, Tho. Swallow, Charles Pickerne, Arthur Newman, Tho. Blithe, Will am Vincent, Rich. Whaley, were called and challenged.

Thomas Grover, Edw. Rolfe, Tho. Ufinan, William Whitcombe, Rich. Cheney, Tho. Bide, Charles Pitfield, John Smith, Tho. Morris, Tho. Freen, Henry Twyford, Samuel Staruel, were the Jury sworn.

*Clerk.* Crier, make Proclamation.

*Crier.* O yes, if any man can inform his lords the king's justices, &c.

*Clerk.* Tho. Scot, Hold up thy hand. You that are sworn of this Jury, you shall understand that the prisoner, at the bar stands indicted by the name of Tho. Scot, late of Westminster, in the county of Middlesex, gent. 'For that he, together with John Lisle, &c.' [Here the Indictment was read.] 'Unto which Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his trial hath put himself upon God and the country, which country you are. Now your charge is to enquire, whether, &c.'

*Mr. Sol. Gen.* You that are sworn of this Jury, this inquisition for blood, royal blood, goes on against the prisoner at the bar; he stands indicted for compassing, imagining, and contriving the death of the late king, of blessed memory: It is laid to his charge in the Indictment, that he did assemble at Westminster, and that he, with other persons, usurped the authority of sitting and sentencing to death his said late majesty, and that in consequence and pursuance of that the king came to his death; The treason he stands charged with is the compassing and imagining the King's death: the other parts of the Indictment are but overt-acts, that do but evidence and prove the corruption of his heart. If we prove but some of these overt-acts, then you must find him Guilty. Our evidence against this gentleman will be thus: We shall call witness to prove his sitting in the Court, sentencing his king, while his king stood a prisoner at the bar; the warrant for execution of the king, directed to certain persons to see execution done accordingly, was under hands and seals, and among those hands and seals, the hand and seal of the prisoner at the bar is one: And then we shall produce to your lordships witnesses to shew you with what a hard and impenitent heart this hath been committed; for he so gloried in the act, that he desired it might be writ upon his tomb.

*Mr. Nutley, Mr. Kirke, Mr. Masterson, and Mr. Clark, sworn.*

*Counsel.* Mr. Masterson, be pleased to tell my lords and the Jury if you have seen the prisoner at the bar sit in that which they called the High-Court of Justice.

*Masterson.* My lords, and gentlemen of the Jury, I saw the prisoner at the bar present at the High-Court of Justice (as they called it) for the trial of the late king some days; that is to say, either upon the 22d or 23d of Jan. 1649; but particularly upon the 27th of that month in the said year, when the Sentence of death was pronounced against his late majesty, I saw the prisoner at the bar present.

*Counsel.* As one of the Judges, do you mean?

*Masterson.* As one of the Judges sitting upon the bench.

*Scot.* Do you know whereabouts I sat?

*Masterson.* I cannot satisfy you in that, but I saw you sitting upon one of the benches.

*Counsel.* Mr. Clark, you hear the question, pray answer what you know touching it.

*Mr. Clark.* My lords, and you gentlemen of the Jury, I was present in the year 1649, when his late majesty stood a prisoner at the bar in that which they called the High-Court of Justice, and among other persons there present in that business, I observed Mr. Scot, the prisoner at the bar, to sit as one of the Judges, and particularly upon the 23d and 27th of January in the said year, upon which last day the Court pronounced Judgment upon the late King.

*Counsel.* Did he stand up as assenting to the sentence?

*Mr. Clark.* They all stood up, to my apprehension, I know not particularly whether the prisoner at the bar did.

*Counsel.* Mr. Kirke, tell my lords and the Jury your knowledge in this business touching the prisoner at the bar.

*Mr. Kirke.* I was present at the trial of his late majesty several days; among the rest of the persons that sat in the Court as Judges, I saw the prisoner at the bar, and particularly upon the day of the sentence, the 27th of Jan. 1649, the Court stood up unanimously as assenting.

*Counsel.* Shew him the Warrant for execution.

*Kirke.* This is his hand.

*Counsel.* Have you seen his hand often?

*Kirke.* Yes, Sir, and am well acquainted with it.

*George Farrington sworn.*

*Counsel.* Shew Mr. Farrington the Warrant; do you know that to be Mr. Scot's hand-writing?

*Farrington.* I did not see him write it, but I do verily believe it to be his; I have often seen his hand-writing.

*Counsel.* Mr. Nutley, do you know Mr. Scot's hand-writing? Is that Mr. Scot's writing? [The Warrant shewn him.]

*Nutley.* I do verily believe it is.

*Counsel.* Have you been acquainted with the writing of his name?

*Nutley.* I have seen him write his name, and do verily believe it to be his hand.

*Counsel.* Clerk, read the Warrant.—He read it accordingly.

*Counsel.* That which remains of our evidence is to prove his boasting of this villainy; we shall desire you to hear Sir Theophilus Biddolph.

*Sir Theophilus Biddolph sworn.*

*Counsel.* Pray tell my lords and the jury what you have heard the prisoner say touching this business of putting the King to death.

Sir T. Biddolph. I did hear him confess that he did sit as one of the judges of the late King; and that he was so far from repenting of the act, that he did desire when he died that a tombstone might be laid over him with this inscription, 'Here lies Thomas Scot, who adjudged to death the late King.'

*Counsel*. Where did he say this?

Sir T. Biddolph. In the parliament house.

Colonel Copley, Esq., sworn.

*Counsel*. Pray, Mr. Copley, tell my lords what you know of this business.

Mr. Copley. My lord, I was one of the Secluded Members; when we were called to sit in the house again, the prisoner at the bar, Mr. Thomas Scot, (I think it was the last day we sat,) there being some speaking of the horridness of the fact, he made a long harangue about that horrid act; and he said, 'He hoped he should never repent of it,' and desired that when he died it might be written upon his tombstone, 'Here lies Thomas Scot, who adjudged to death the late King.'

*Counsel*. We have done with our evidence.

*Court*. When was it you heard him speak those words?

Sir T. Biddolph. To my best remembrance it was in Richard's parliament; it was about January or February was twelve-months.

*Counsel*. Were not you a member for the city of London in that parliament?

Sir T. Biddolph. Yes.

*Counsel*. Mr. Copley, when was it that you heard it?

Mr. Copley. It was in April last.

*Sol. Gen.* It was a settled persuasion of his heart, and he thought it fit to be gloried in.

The Lord Mayor Elect sworn.

*Counsel*. Pray, my lord, tell my lords what you know concerning the prisoner at the bar.

Lord Mayor Elect. My lords, I was one of those Secluded Members that were returned again a little before the coming in of his majesty: upon the last day of our sitting, Mr. Scot seeing the house must break, said, 'Their heads must be laid to the block if there was a new parliament,' for, said you, (looking on Mr. Scot) 'I confess I had a hand in putting the King to death, and I desire all the world may take notice of it, and I desire when I die it may be written on my tomb. I do not repent of any thing I have done; if it were to do, I could do it again.'

*Sol. Gen.* Do it again! He follows his blows home.

William Lenthall, esq., sworn.

*Counsel*. Mr. Lenthall, pray be pleased to tell my lords and the jury, what you do remember of any discourse of Mr. Thomas Scot, (the prisoner at the bar,) tending to the glorying in this act, or any thing in justification of that act.

Mr. Lenthall. My lords, the last day it was, the last instant of time, we were resolving of

breaking the house, there was some opposition in it, not very much: the general consent of the house was to dissolve it; I must confess at that time I did hear Mr. Scot much justify that act of the death of the king, which truly I was much offended at. I confess to you upon my oath, touching his speech of the inscription upon his tomb, I did not hear that: Justifying the death of the king he made a long harangue about, and he sat at the upper end of the gallery; but these words, 'of having it written upon his tomb, and to have all the world take notice of it,' I do not remember.

*Counsel*. My lords, my Lord Mayor Elect omitted something; pray let him speak to it.

Lord Mayor Elect. My lords, the conclusion of his speech ended thus: 'being it is your pleasure to have it so,' the house dissolved, 'I know not how to hinder it; but when that is done, I know not where to hide this hated head of mine.'

*Counsel*. We desire to hear what the prisoner will say for himself.

Scot. I have no certainty from the witnesses that I was there, but in a wandering way; they know not where I sat, nor my posture.

Mr. Baker sworn.

*Counsel*. We do not call this witness as material, for we must insist upon it quite through, that after twelve years time it is not possible a witness should remember where every particular person sat. Pray hear this witness.

Baker. I do perfectly remember that Mr. Scot sat two rows above Mr. Bradshaw, on his left hand, in that which they called the High Court of Justice.

Scot. As to the Warrant you speak of, I know not what it signifies, I desire to know what the nature of it is.

*Counsel*. The warrant hath been read; it is not produced against him as a record for then it needed not be proved: but it is produced against him as an evidence in writing under his own hand, that he was consenting to the death of the king.

Scot. They may very much mistake my hand; you speak of words that I should utter in parliament, I do humbly insist upon it that I am not to answer, nor they alledge, any thing of that nature: it is a high breach of privilege.

*Counsel*. There is no privilege of parliament for treason. First, some of the words were spoken in Richard's parliament, and that you do not own to be a parliament; then another thing (a known rule in law), there is no privilege of parliament for treason.

Scot. I have heard the rule, but do not so well understand it, of that spoken in Richard's Parliament; it will be a nice thing for me to distinguish between that and another parliament; but this I think, that convention of the people ought to have the privilege of the parliament, as well as any other. I humbly conceive it was testimony ought not to be given to you; whatever I say in parliament, the privilege extends to no more than this, that I may

be lawfully secured till the parliament hath been acquainted with it, but not finally concluded till the parliament have heard it.

*L. C. Baron.* You are indicted for compassing and imagining the death of the king: I would have you understand, that in case a man should commit an act of treason, be it in what place soever, there is no place of sanctuary for treason: in case of felony, if a man be indicted for felony in the parliament-house, during the time of parliament, this is not to be tried in parliament, but according to the rule of common law; so in case of treason, the house of commons in parliament doth not try treasons: that distinction which you make is nothing.

*Scot.* I humbly conceive there is such a privilege, that no man shall ever be called to account for any thing spoken in parliament, if he be not called to account by the house before any other member be suffered to speak.

*L. C. Baron.* That is, the house will not determine; but that doth not extend to your case; you are not charged here criminally for speaking those words that have been testified against you; but for compassing and imagining the king's death, of which there are other evidences, and this but an evidence to prove that.

*Scot.* My lord, I never did say these words with that aggravation which is put upon them, I have a great deal of hard measure; as to say, 'I hope I shall never repent,' I take God to witness I have often, because it was spoken well of by some, and ill by others, I have by prayers and tears often sought the Lord, that if there were iniquity in it he would shew it me; I do affirm I did not say so.

*Baker.* My lord, I omitted something, which was this; I had occasion to speak to Mr. Scot whilst Richard's parliament was sitting, and among other discourse insisting upon some things that Richard had done, saith he, 'I have cut off one tyrant's head, and I hope to cut off another.'

*Scot.* My lord, this is but a single witness.

*Sol. Gen.* I suppose he meant Richard, for he was a tyrant.

*L. C. Baron.* Speak on, Mr. Scot, whatever you have to say.

*Scot.* If that be laid aside as an impertinency, I have less to say.

*L. C. Baron.* The next thing you have to do is to answer to the fact, whether you did it, or did it not.

*Scot.* I say this, whatever I did, be it more or less, I did it by the command and authority of a parliamentary power; I did sit as one of the judges of the king, and that doth justify me, whatever the nature of the fact was.

*L. C. Baron.* We have had these things alleged before us again and again: the Court are clearly satisfied in themselves that this act could not be done by any parliamentary power whatsoever. I must tell you what hath been delivered, that there is no power on earth that hath any coercive power over the King, neither

single persons nor a community, neither the people collectively nor representatively. In the next place, that which you offer to be done as by authority of parliament, it was done by a few members of the house of commons; there were but 46 there at that time, and of those 46, not above 26 that voted it; at that time the house of lords was sitting; who had rejected it, and without them there was no parliament; there was a force upon the parliament, there was excluded seven parts of eight: supposing you were a full house of commons, and that without exception, there was not authority enough; and it is known to you, (no man better) that there never was a house of commons, before this time that this foul act was made for erecting that High Court of Justice, (as you called it,) assumed that authority of making a law; you cannot pretend to act by authority of parliament; and because you would excuse it, you did it by authority of parliament, whether it were good or no: if any man do that which is unlawful by an unlawful authority, the assuming to do it by that authority is an aggravation, not an extenuation, of the fact: it was over-ruled; I think my lords will tell you, that they do not allow of that authority at all, either to be for justification or plea.

*Scot.* My lords, I humbly pray leave to say, that without offence to the Court, (every person whereof I honour) this Court hath not cognizance to declare whether it were a parliament or no.

*L. C. Baron.* That was objected too; and we must acquaint you, That first of all, it is no derogation to parliaments, that what is a statute should be adjudged by the common laws. We have often brought it into question, whether such and such a thing was an act of parliament, or not; any man may pretend to an authority of parliament: if forty men should meet at Shooter's-Hill, as the Little Convention did at Westminster, and say, 'We do declare ourselves a parliament of England,' because they do so, shall not this be judged what is a statute, and what not? It is every day's practice, we do judge upon it; the fact is known to every body, they did assume to themselves a Royal Authority; it hath been over-ruled already; it hath been the mistake of many; the vulgar acceptance of the word parliament. A parliament consists of the king, lords, and commons; it is not the house of commons alone, and so it is not by authority of parliament; it is not, unless it be by that authority which wakes up the parliament: you cannot give one instance that ever the house of commons did assume the king's authority.

*Scot.* I can many, where there was nothing but a house of commons.

*Court.* When was that?

*Scot.* In the Saxons time.

*Court.* You say it was in the Saxons time; you do not come to any time within 600 years; you speak of those times wherein things were obscure.

*Scot.* I know not but that it might be as lawful for them to make laws as this late parliament, being called by the Keepers of the Liberties of England: my lords, I have no seditious design, but to submit to the Providence of God.

*Court.* This is notorious to every man; this we have already heard and over-ruled.

*L. Finch.* That that I hope is this, that Mr. Scot will contradict that which he hath said before; that is, that he hopes he should not repent, I hope he doth desire to repent. Mr. Scot, for this we must over-rule it, as we have done before; there is nothing at all to be pleaded to the jurisdiction, and this point hath been determined before.

*Scot.* The parliament in former times consisted not so much of king, lords and commons, but king and parliament. In the beginning of the parliament in 1641, the bishops were one of the three estates; if it be not properly to be called a parliament, a legislative power, though it be not a parliament, it is binding: if two estates may take away the third, if the second do not continue to execute their trust, he that is in occupancy may have a title to the whole: I do affirm I have a parliamentary authority, a legislative power, to justify me.

*L. C. Baron.* Mr. Scot, what you speak concerning the Lords Spiritual is nothing to your case, be it either one way or other; it was done by an act of parliament, with consent of the king, lords, and commons; though you will bring it down to make these commons have a legislative power, I told you it was over-ruled before. We have suffered you to expatiate into that which was a thing not intended by many of my lords, that you should have any such power to expatiate into that which is nothing but indeed to make a new government, which is the highest treason next to the murdering of the king, in the world; to subvert the laws, and to make a few of the commons, nay, if they had been the whole, to make them to have the legislative power. Mr. Scot, if you have any thing in extenuation of the fact, we shall hear you; further we cannot.

*Ld. Finch.* If you speak to this purpose again, for my part I will profess myself I dare not hear further of it; it is so poisonous blasphemous a doctrine, contrary to the laws, if you go upon this point, I shall (and I hope my lords will be of that opinion too) desire the jury may be directed.

*Scot.* I thought, my lord, you would rather be my counsel; it is not my single opinion, I am not alone in this case, therefore I think I may justify myself in it; it was the judgment of many of the Secluded Members to own us to be a parliament.

*Lord Annesley.* What you said last doth occasion my rising; you seem to deliver my opinion, who you know could never agree to what you have alledged; truly I have been heartily sorry to hear the defence you have made to-day, because you know I have had letters from you of another nature; I was very

confident to have heard you an humble penitent this day, instead of justifying yourself. As to that which you say of the Secluded Members owning you to be a parliament, they were so far from it, that you know for how many years they lay under sufferings and obscurity because they could not acknowledge that an authority which was not so: you cannot forget the Declaration of both houses that was published upon a jealousy that the people had, they would change the government of king, lords and commons; it was so far from their thoughts, it was called in that Declaration, 'A black scandal cast upon them:' this Declaration you know was by order of both houses affixed in all churches of England, that people might take notice what they held to be the fundamental government of this kingdom, king, lords, and commons: after this for you to set up another government, and under them to act such things that one would think should hardly enter into the heart of any man! You know very well, all along they declared themselves faithful subjects to the king, and so would have lived and died: and you might have had your share of the happiness of that peace, if you could have had an inclination to submit to that which both houses had resolved. When you and others could not bring your hearts to stoop to your fellow subjects, when you could not submit to that equal rule to take your share with them, when pride carried some so high, then was the beginning of your fall and others; and none could expect other than what is now come to pass, that they should come to that shame and sorrow that this day hath brought upon you: I could have wished to have heard nothing but an humble confession of the fault that hath been clearly proved, and no justification of it: you have sworn, among others, to preserve the laws and people of this kingdom: but you drove away not only the house of lords, but most of the commons; and then to give the name of a parliament to the remainder, this is a great aggravation of your treason. I think we of the secluded members could not have discharged our duty to God and the kingdom, if we had not then appeared in parliament to have dissolved that parliament, and so by our joint assent put an end to all your pretences, which if we had not done, we had not so soon come to our happiness, nor you to your miseries.

*L. C. Baron.* The Court hath told you before their opinions in the thing, and no further debate is to be allowed in this; the justification of it doth comprehend treason; we ourselves are not by law to allow the hearing of it. If you have nothing to say for yourself, I must give direction to the jury.

*Scot.* I humbly crave leave to move the jury that they bethink themselves, and consider of it rather as a special verdict, than of a definitive one. I think there is cause of a special verdict.

*Court.* If there was need of a special verdict (we are upon our oaths), I should give



direction to the jury. What we do, we do upon our oaths, and must answer it before God Almighty. The Court hath delivered their opinions before, that in this case the pretended authority under which you did derive that power which you did execute, that it is no authority, it is void in law, it is a foundation (true) of subverting all laws, and of the breach of all religion; a power that you assume to yourselves of judging and condemning your king: that you would countenance such an authority, is a great aggravation of the fault. They are judges whether you did imagine or compass the king's death, that is all the jurors have to do. Gentlemen of the jury——

*Scot.* I would know what particular law I have transgressed in this thing.

*Court.* The law of God and Man, 25 Edw. 3.

*Scot.* I humbly conceive that reaches not to this case.

*Court.* To satisfy you in that, the very words of the statute are, 'If any man do compass or imagine the king's death, it is treason;' the Indictment is, that you did imagine and compass the death of the king: if the fact be proved against you, you are within the statute.

*Scot.* You will not say the king shall be a traitor if he shall compass the death of the queen.

*Court.* The queen is a subject.

*Scot.* I am not yet convinced.

*L. C. Baron.* Gentlemen of the jury——

*Scot.* I do plead and claim that I am within the compass of several Pardons, and desire counsel in that particular; I do come within the compass of his majesty's Pardon.

*L. C. Baron.* If you had not gone on to matter of justification, you might have been more heard to this of Pardon; but after a justification then to come for a pardon, which implies a confession of guilt, they are contradictory; I must tell you we are now upon point of law. That proclamation I doubt not but his majesty will inviolably make good; but we are not to judge of that, it is nothing to a legal proceeding: you are now in a court of law, it is not to be pleaded in a court of law; the king's pardon in law must be under his broad seal: how far you are under that proclamation care will be taken, and what is fitting to be done will be done; but it is nothing in the matter of the charge to this jury.

*Scot.* I desire counsel touching the statute 25 Edw. 3.

*Court.* You should have done it before you had confessed the fact.

*Scot.* I may do it in arrest of judgment.

*L. C. Baron.* Mr. Scot, for that of the king's Proclamation, if you be within the benefit and compass of it, according to his royal word and honour in it, you will have the benefit of it; but it is not a plea in law, but it must be a pardon under seal; whatsoever concerns that Proclamation will be considered, it is nothing to the matter whereupon the jury are to go.

*L. C. Baron.* Gentlemen of the jury, you see the prisoner, Tho. Scot, stands indicted for

compassing and imagining the death of our dread sovereign king Charles the first of most glorious and blessed memory: he is indicted for compassing and imagining his death, there is the treason; and what is set afterwards in this indictment is only to manifest this compassing and imagining, because that being in the heart alone, without some overt-act nobody can prove it: there are several overt-acts laid in the indictment; one is, a traitorous consulting and meeting together how to put the king to death: then a sitting upon the king as a prisoner, being before them about his life and death: the third is sentencing to death; that which followed is, that he was murdered: if any of these acts should be proved, the indictment is proved; for the proof, there are several witnesses have fully proved he did sit there several times, particularly upon Jan. 27, which was the day of the sentence; that he did sit there, all of them agree to that; it is true, as to the circumstances where he sat, one gentleman saith he sat in the second row, on the left hand of Bradshaw; you will remember it is 12 years ago, how any man upon the view, and after so long a distance of time, would be able to remember in what posture one man was from the rest, I think neither you nor I can remember: here is one proves to you that he did sign the warrant for executing the king; he saith, 'How can another know his hand?' You see what the witnesses say, they know it; a man can prove nothing more of another man's hand than that, unless they see it written: there is nothing to put upon you but his words: you see what words are aggravated against Mr. Scot; whereas he saith, it is a breach of the privileges of parliament; if it were so, it is nothing to this fact; though another man should break the privileges of parliament, it is nothing to you; but besides, it is not a breach of the privilege of parliament. You have heard the witnesses what they have said against him. Mr. Lenthall swears that he did speak at large fully in owning that business of the king's death; the rest swear positively to the same effect, and that at several times: what was that? He gloried in it, defended it, and said 'He could wish it were engraven on his tomb-stone;' he hath denied this that the witnesses have proved: that which is left to you is, whether the prisoner at the bar is guilty of compassing and imagining the king's death; and so go together.

After a little consultation together they settled in their places again.

*Clerk.* Tho. Scot, hold up thy hand. Look upon the prisoner at the bar; how say you, is he Guilty of the Treason whereof he stands indicted? Or Not Guilty? *Jury.* Guilty.

*Clerk.* Look to him, Keeper.

*Clerk.* You say the prisoner is Guilty, &c. and so you say all? *Jury.* Yes.

*Clerk.* Set Mr. Scot aside\*.

\* See an account of his Behaviour and Execution, *infra*.

*Clerk.* Set John Jones and Gregory Clement to the bar\*.

Which was done accordingly.

Thereupon the said Gregory Clement preferred his Petition to the Court. Indictment read against them both.

*L. C. Baron.* If you do confess your offence, your Petition will be read.

*Clem.* I do, my lord.

\* Ludlow says, that "Col. John Jones and Mr. Gregory Clement, finding all that had been said in vindication of the things objected against the gentlemen who had been already tried, to prove ineffectual, informed the Court, that they could say no more than had been already alleged; and therefore confessed the fact. Upon which they were declared Guilty, as the persons before-mentioned had been.

"Mr. Gregory Clement was chosen a member of the Parliament about the year 1646, and discharged that trust with great diligence; always joining with those who were most affectionate to the Commonwealth, though he never was possessed of any place of profit under them." Being appointed one of the Commissioners for the trial of the King, he durst not refuse his assistance in that service. He had no good elocution, but his apprehension and judgment were not to be despised. He declared before his death, that nothing troubled him so much as his pleading Guilty at the time of his trial to satisfy the importunity of his relations; by which he said he had rendered himself unworthy to die in so glorious a cause.

"Col. John Jones was a gentleman of a competent estate in North Wales, and so well beloved in his country, that he did considerable service to the public cause by his interest in those parts. He reduced the Isle of Anglesea to the obedience of the Commonwealth, and was soon after chosen to serve in parliament for that place. He had been one of the Council of State; and in the year 1650 was constituted one of the Commissioners of Parliament for managing the civil affairs of Ireland. This trust he discharged, during the course of divers years, with great diligence, ability, and integrity, in providing for the happiness of that country, and bringing to justice those who had been concerned in the murders of the English Protestants. When the great parliament was restored to the exercise of their authority, after their long interruption, they chose him to be one of those eight persons to whom they committed the care of the public safety, till they could establish a Council of State. Of this also he was chosen a member, and soon after sent by the Parliament to his former trust in Ireland; where he continued till the late change. Being drawn to Charing-cross on the same sled with col. Scroop, the gravity and graceful mien of these aged gentlemen, accompanied with visible marks of fortitude and internal satisfaction, surprised the spectators with admiration and compassion."

*L. C. Baron.* Mr. Clement, if you do confess (that you may understand it,) you must when you are called, and when the Jury are to be charged; you must say, if you will have it go by way of confession, that you wave your former plea, and confess the fact.

\* *Clerk.* Gregory Clement, you have been indicted of High Treason, for compassing and imagining the death of his late majesty, and you have pleaded Not Guilty; are you contented to wave that plea, and confess it?

*Clem.* I do confess myself to be Guilty, my lord\*.

*Clerk.* Set him aside.

## TRIAL OF JOHN JONES.

October 12, 1660.\*

*Clerk.* John Jones, hold up thy hand. These men that were first called, &c. if you will challenge all, or any of them, you must challenge them when they come to the book, and before they are sworn.

*Jones.* I confess I sat amongst them some days, but not maliciously contrived the death of the king.

*Counsel.* He is troubled at the form; he confesseth the matter, that he was there sitting in the High Court of Justice. If he will not confess it, he knows that we can prove his hand and seal to that Bloody Warrant. He is troubled that he is said to have traitorously and maliciously contrived the king's death: He that doth these acts towards it is by law responsible as to the malice.

Jury sworn.

Sir Tho. Allen, sir Henry Wroth, sir Jer. Whicheott, James Hawley, Henry Mildmay, Christ. Abdy, Nich. Raynton, Richard Cheney, Tho. Hyde, Charles Pitfield, Abraham Scudamore, Charles Pickens: In all twelve.

*Clerk.* Crier, make Proclamation.

*Crier.* If any man can inform, &c.

*Clerk.* John Jones, hold up thy hand. Look upon the prisoner, &c.

*Mr. Sol. Gen.* My lords, and gentlemen of the Jury, I must open to you, as to other juries, that the short point of this long Indictment is but this, that the prisoner at the bar did imagine and compass the death of the king, which is your issue to try. We shall prove it by those overt-acts which the law doth require. To prove the sitting, sentencing, and signing the Warrant for Execution by the prisoner at the bar.

*Counsel.* Call Mr. Clark and Mr. Carr, and Holl. Sympon, who were sworn.—Mr. Sympon, did you see the prisoner at the bar sitting in that which they called the High Court of Justice?

*Sympon.* I did see Mr. Jones sit divers times, both there and in the Painted Chamber.

*Jones.* I do confess I sat divers times.

\* See an account of their Execution, *infra*.

*Counsel.* Did he sit the day of Sentence?

*Synpson.* I cannot say it.

*Counsel.* Mr. Clark, you hear the question, pray answer my lord.

*Clark.* My lord, and gentlemen of the Jury, I was there the 27th of Jan. 1649. I saw col. Jones there several days before, but I did not see him that day; his name was called, but I do not know whether he was present.

*Counsel.* Mr. Carr, did you see him sit on the 27th day, which was the day of Sentence?

*Carr.* My lords, he answered to his name some days, I am not able to tell what day.

*Mr. Nutley sworn.*

*Counsel.* Can you tell whether the prisoner at the bar was present in that which they called the High Court of Justice?

*Nutley.* The prisoner at the bar was several times in the Court which was called the High Court of Justice; truly I cannot say whether he was there the 27th day, the day of the Sentence.

The Warrant for summoning the Court being shewed.

*Counsel.* Is that Mr. Jones's hand (the prisoner at the bar) set to that Warrant?

*Nutley.* I have been acquainted with his hand, I do believe it is.

The Warrant for Execution also shewed.

*Counsel.* Is that the same hand-writing?

*Nutley.* Yes, I believe it is; he hath written several letters to me.

*Mr. Hartlib sworn.*

*Court.* Mr. Hartlib, do you know Mr. Jones's hand?

*Hartlib.* I never did see him write, but I have seen several letters out of Ireland, and other papers which have been supposed to be his hand-writing; this seems to be like that which was reputed to be his hand.

*Counsel.* Mr. Clark, do you know Mr. Jones's hand-writing?

*Clark.* I have seen several letters of col. Jones's, and these are like his hand-writing; I do believe they are his hand-writing.

Mr. Jones looks upon them both, and confesses they are like his hand-writing.

*Counsel.* We have given our Evidence: What do you say for yourself before Charge be given to the Jury?

*Jones.* I have little to say, your lordships have already heard what is to be said in this case, I have nothing to say to the point; I am not fit to plead any thing, especially in matter of law; I must wholly put myself upon the Lord, and this honourable Court and Jury.

*L. C. Baron.* Gentlemen of the Jury, here is his prisoner, John Jones, stands indicted, for that he, with others, did compass and imagine the king's death; that is the substance of the indictment, The indictment sets forth several acts each proving the compassing and imagining the

king's death: One of them is, that they did consult and meet together, and propound how the king should be put to death: The second is, they did assume a power to judge the king: The third is, that they did actually sit upon him: And the last of them is, that they sentenced the king, and afterwards the king was murdered. The whole substance is, whether he did compass and imagine the king's death. If any one of these particulars that are alledged for the overt-acts be proved, you are to find the Indictment. He hath confessed very ingenuously, that he did sit upon the king, that he did sit in that Court, and so there is an overt-act proved: if nothing else, you ought to find him guilty of this treason. There is further evidence (though not any evidence of his sitting the last day of the sentence) you have had three comparing similitudes of hands to prove that he did sign that sentence, that horrid instrument, whereby the king was ordered to be put to death; one of them having received letters from Ireland, and others acquainted with his hand, say, that it is like his hand; he hath so confessed the likeness of his hand, but he saith he doth not remember he signed it. As to you of the jury, there is no more to be considered, if any one of the acts do appear true to you, that is sufficient to find him guilty (though he were not guilty of all); but that he did compass and imagine the king's death is clear, in sitting and signing the Warrant; for the other, whether you shall find that he did sentence the king, that must be left to you. Whatsoever it is, still it is the same; if any one be proved, you ought to find him guilty of the Indictment, which is the compassing and imagining the king's death. I think you need not stir from the bar, for he hath confessed it.

The Jury went together, and after a little consultation returned to their places.

*Clerk.* Are you agreed of your verdict?

*Jury.* Yes.

*Clerk.* Who shall say for you?

*Jury.* Our Foreman.

*Clerk.* John Jones, Hold up thy hand. Look upon the prisoner at the bar. How say ye, is he guilty, &c.

*Foreman.* Guilty.

*Clerk.* Look to him, Keeper.

*Clerk.* You say the prisoner at the bar is guilty, &c. and so you shall?

*Jury.* Yes.

*Clerk.* Set all that have been tried this day to the bar.

*Lord Chief Baron.* Mr. Scot, I must speak a word to you; you made mention of the king's Proclamation for pardon, and you did desire the benefit of it. As I told you before, so now again, that it was not proper for us upon that proclamation to give any allowance by way of plea, because the pardon ought to be under the broad seal; but God forbid but just and due consideration should be had of it with honour, so far as you are comprehended within it; though judgment shall pass, no Warrant

for Execution shall go out against you till consideration be had, how far you are within the compass of that proclamation; and the like to you, Mr. Scroop.

*Clerk.* Adrian Scroop, Hold up thy hand. Thou hast been indicted of High Treason, and hast thereof been found Guilty: What canst thou say for thyself why judgment should not pass for thee to die according to law.

*Scroop.* I do humbly submit to his majesty's mercy.

*Clerk.* John Carew, Hold up thy hand. Thou art in the like condition with the former, what canst thou say, &c.

*Carew.* I commit my cause unto the Lord.

*Clerk.* Thomas Scot, Hold up thy hand. Thou art in the like condition with the former, what canst thou say, &c.

*Scot.* I shall only say, I do only cast myself upon his majesty, and pray mercy.

*Clerk.* John Jones, Hold up thy hand. Thou art in the like condition with the former, what hast thou to say, &c.

*Jones.* I pray his majesty's clemency.

*Clerk.* Gregory Clement, Hold up thy hand. Thou standest indicted of High Treason, and therunto hath pleaded Guilty, what canst thou say, &c.

*Clement.* I pray mercy from the king.

*Lord Chief Baron.* You that are prisoners at the bar, ye see the sentence of death is to pass against you; and for aught you know, or we know yet, may be nearer than you are aware: How soon it will be executed we know not; when you have reflected upon your own consciences, many of you could not chuse but look there, and see as in a glass, the foulness of this horrid offence: it is the Murder of our most gracious sovereign king Charles the first of blessed memory; a prince whom we (such as had the honour personally to attend him) knew was of such parts and virtues, if he had been a private man, more could not have been desired; truly what he did as a king, his clemency, how it appeared at first in this prince's time: If you look what peace and prosperity we enjoyed in his days, we will not find it in other king's times; you had not a nobleman put to death, save one, and that for an offence which must not be named\*; a prince that had granted so much: You may remember what was granted before the beginning of these wars; Grievances complained of, Star-Chamber, High-Commission Court, Ship-money, the Claim of Staunery, &c. all these were taken away: What concessions he made after in the Isle of Wight; how much he wooed and courted the people for peace. Purge this unto you, only that you would lay it to your hearts, that you would consider what it is to kill a king, and to kill such a king. If any of you shall say, that we had no hand in the actual murder of the king, remember that they that brought him to the bar, were all as one as if they had

brought him to the block; as St. Paul confessed, though he held but the clothes, he killed the martyr Stephen. You are shortly to appear before God's tribunal, and I beseech God Almighty that he will give you, and us all, those hearts, that we may look unto ourselves; no fig-leaves will serve the turn; whatsoever you have said now as prisoners, or allowed to say for your own preservation in point of fact; notwithstanding it will not serve before God Almighty: All things are naked before him. Lay it to your hearts; God Almighty, though you have committed these foul and horrid sins, yet he can pardon you, as he pardoned that murder of David: I speak it to you, that you may lay it to your hearts. I am heartily sorry, in respect you are persons of great civility, and (those that I know) of very good parts; and this I must say, That you will consider with yourselves, if any of you have been led away, though it were with his own conscience, if any of you did it, as you conceived, in conscience, remember that our Saviour saith, 'The time shall come when they will persecute you, and kill you, and think they do God good service.' I have the judgment of charity, possibly some of you did it in this kind, and this is less than doing it wilfully; others might do it by a misguided conscience; there is a spiritual pride; men may over-raise themselves by their own holiness, and they may go by pretended revelations: men may say, I have prayed about such a thing (I do not speak it with reproach to any) If a man should commit a robbery, or murder, merely because he will, and should come and say, I have prayed against it, and cannot understand it to be a sin, as one in Shropshire did, and yet notwithstanding killed his own father and mother. Try your own spirits, you must not think that every fancy and imagination is conscience; men may have a strange fancy and presumption, and that they may call conscience: Take heed, there is a spiritual pride; the devil doth many times appear like an angel of light; do not rest upon that self-confidence: examine your hearts, consider the fact by the Word of God; that is the rule, the law is to be applied to it, Eccles. viii. 'Where the word of a king is, there is power; and who can say unto him, What dost thou?' That is to shew the power of kings in scripture: Remember withal that of David in Psalm 51, that penitential Psalm, when he had committed that horrid sin against Uriah; remember what he said, being a king, *Tibi soli peccavi*, 'Against thee only have I sinned.' Truly it being in such a case, I speak it as before God Almighty, according to my duty and conscience, I wish most heartily as to your persons; I pray God to give you that grace that you may seriously consider it, and lay it to heart, and to have mercy upon you, and to forgive you, and this is all that I have to say; and now not I, but the Sentence of the law, the judgment which I have to give against you, is this: You prisoners at the bar, the Judgment of the Court is, and the Court doth

\* See Lord Audley's Case, *ante*, vol. 3, p. 402.

award, that you be led back, &c. and the Lord have mercy on your souls\*.

*Clerk.* Crier, make Proclamation.

*Crier.* O Yes, &c. All manner of persons, &c. Jurors and Witnesses, to appear to-morrow morning at seven o'clock, at this place; so God save his Majesty.\*

### TRIAL OF JOHN COOK.

October 13, 1660.

The Court being assembled, Proclamation was made.

*Clerk of the Court.* Set Cook, Peters, Hacker, and Axtel, to the bar: They being brought, the Keeper was afterwards ordered to take back all, except Mr. Cook.†

\* See particulars of their Behaviour and Execution, *infra*.

† "Mr. John Coke," says Ludlow, "late Chief Justice of Ireland, had in his younger years seen the best part of Europe; and at Rome had spoken with such liberty and ability against the corruptions of that court and church, that great endeavours were used there to bring him into that interest. But he, being resolved not to yield to their solicitations, thought it no longer safe to continue among them; and therefore departed to Geneva, where he resided some months in the house of Signior Gio. Diodati, minister of the Italian church in that city; after which he returned to England, and applied himself to the study of the laws; and in that profession became so considerable, that he was appointed by the High Court of Justice to be their solicitor at the king's trial. I have already said, that he was seized and imprisoned by sir Charles Coote; who, joining with Monk in his treachery to the Commonwealth, sent him over to England, that he might sacrifice him to his new master, in satisfaction for the blood of his party which he himself had formerly shed. Being brought to his trial, he was accused of preferring, in the name of all the good people of England, an impeachment of high treason to the High Court of Justice against the late king; that he had signed the said impeachment with his own hand; that, upon the king's demurrer to the jurisdiction of the court, he had pressed that the charge might be taken for confessed; and therefore had demanded judgment from the court against the king. But this indictment being more particularly charged upon him in the three following articles,

1. That he, with others, had propounded, counselled, contrived, and imagined the death of the late king;
2. That, to bring about this conspiracy, he, with others, had assumed authority and power to accuse, kill, and murder the king;
3. That a person unknown did cut off the king's head; and that the prisoner was abetting, aiding, assisting, countenancing, and procuring the said person so to do,

*Clerk.* John Cook, hold up thy hand, &c.

*Jury.* Sir J. Whitchot, James Hawley, Jo. Nichol of Holden, Tho. Nichol, F. Thorn, Edw. Wilford, Will. Gumbleton, Jo. Shelbury, Tho. Jenney, Tho. Willet, sir H. Wroth, Richard Cheney, of the Jury, called and sworn.

*Cook.* May it please your lordship, I do not know any of these persons. I beseech your lordship, that in regard the safety of my life depends upon the indifference of these persons, that your lordship may demand of the sheriff to know whether he hath not heard them say, or any of them, that they are pre-engaged; I hope they are not, and thereupon I have not challenged any.

he answered, 1st, That he could not be justly said to have contrived or counselled the death of the king; because the proclamation for the king's trial, even by the confession of his accuser, was published on the 9th of January, which was the day before he was appointed Solicitor to the High Court of Justice. In the 2d place, Though the court should not admit that to be an act of parliament, which authorised him to do what he did; yet he assured himself, they would allow it to be an order, which was enough to justify him. 3dly, That he, who had neither been accuser, witness, jury, judge, or executioner, could not be guilty of treason in this case. He urged, That, having acted only as counsel, he was not answerable for the justice or injustice of the cause he had managed; that, being placed in that station by a public command, it could not be said he had acted maliciously, or with a wicked intention, as the indictment mentioned; that words spoken do not amount to treason, much less when set down in writing by the direction of others; especially since no clear proof had been produced, that his name subscribed to the charge against the king was written by himself. He said, That to pray and demand justice, though injustice be done upon it, could not be treason within the statute; that when he demanded justice, it might be meant of acquittal, as well as of condemnation; and that if it should be accounted treason in a counsellor to plead against the king, it must also be felony to plead against any man who may be unjustly condemned for felony: that the High Court of Justice, though now called tyrannical and unlawful, was yet a court, had officers attending them, and many think had authority, there being then no other in this nation than that which gave them their power; and if this will not justify a man for acting within his own sphere, it will not be lawful for any one to exercise his profession, unless he may be sure of the legality of the establishment under which he acts. These and divers other things of no less weight he said in his defence: but the cabal thinking themselves concerned to prevent the like in time to come, and to terrify those who were not only able, but willing also to be employed in such service, procured from the jury a verdict of condemnation against him, according to their desire."

*L. C. Baron.* Sir, the officer reads their names out of his papers, I suppose he doth not pick and chuse them; I would not have him; and I am sure he will not do you any wrong in that particular.

*Cook.* My lord, I am satisfied.

*Clerk.* If any man can inform, &c.

*Clerk.* J. Cook, Hold up thy hand.

*Cook.* My lords, I desire pen, ink and paper.

*L. C. Baron.* Give it him.

*Clerk.* J. Cook, Hold up thy hand. You that are sworn look upon the prisoner; you shall understand, &c. [Here the Indictment was read as before.]

*Sol. Gen.* May it please your lordships, and you gentlemen that are sworn of this Jury, the prisoner at the bar stands indicted for High-Treason, for compassing and imagining the death of the late king of blessed memory: The Indictment sets forth, That he, together with others, did assemble at Westminster-Hall, and sets forth many other particulars of sitting, sentencing, and of the consequent death and murder of the king. The matter and charge of the Indictment is, for compassing and imagining the death of the king; the rest of the circumstances of the Indictment are but alleged as Overt-Acts to prove the imagination, which only is the treason. This prisoner at the bar stands here indicted for this treason of compassing and imagining the late king's death. My lord, his part and portion in this matter will be different from those that have been tried before you; they sat as judges to sentence the king, and he, my lord, stood as a wicked instrument of that matter at the bar, and there he doth with his own hand subscribe and exhibit a Charge of High-Treason, a scandalous libel, against our sovereign, to that pretended Court, to be read against him, as an accusation in the name of all the people of England; when he had done that, he makes large discourses and aggravations to prove (if it had been possible) innocency itself to be treason.\* When he had done, he would not suffer his majesty to speak in his defence, but still took him up, and said, that he did spin out delays, and desired that the Charge might be taken as if he had confessed it: He pressed the Court that Judgment might be given against the king; he was the man that did demand that wicked Judgment before the Court pronounced it; and he was the man that did against his own conscience, after he had acknowledged that he was a wise and gracious king, yet says he, 'That he must die, and Monarchy with him;' there it truth was the treason, and the cause of that fatal blow that fell upon the king. This was his part to carry on; how he did it as a wicked counsellor we shall prove to you, and the wages and reward of the iniquity that he did receive.

\* See his Speech intended to have been spoken to the High Court of Justice, if king Charles the first had pleaded, *ante*, v. 4, p. 1018.

*James Nutley* sworn.

*Counsel for the Crown.* Pray tell the circumstances of the prisoner's proceedings at Westminster-hall, when he did exhibit a Charge against the King.

*Nutley.* My lords, the first day of bringing his majesty to his trial was Saturday, Jan. 20, 1649. Before they sat in public, they that were of the Committee of that which they called the High Court of Justice, did meet in the Painted Chamber, which was in the forenoon of that day. Being there, I did observe that there was one Price a scrivener that was writing up a Charge; I stood at a great distance and saw him write, I saw this gentleman, the prisoner at the bar, near thereabouts where it was writing, I think it was at the Court of Wards. This Charge afterwards (a parchment writing) I did see in the hands of this gentleman, the prisoner at the bar. A very little after that they called their names, they did adjourn from the Painted Chamber into Westminster-hall, the great hall. The method that they observed, the first thing was to call the Commissioners by name in the Act; the pretended Act for trying the King was read; that is, when the Court was sat the Commissioners were called by their names, and as I remember they stood up as their names were called: The next thing was reading the Act for trying of his late majesty. After that was read, then this gentleman, the prisoner at the bar, presented the parchment writing, which was called the Impeachment, or Charge, against his majesty: Mr. Bradshaw was then President of that Court, and so called Lord President; he commanded that the prisoner should be sent for, saying, 'Serjeant Dendy, send for your prisoner;' thereupon the King was brought up as a prisoner, and put within a bar: And when the Court was silenced, and settled, this gentleman, the prisoner at the bar, did deliver the Charge, the Impeachment to the Court, and it was read; the King was demanded to plead to it presently. Here I should first tell you, that upon the King's first coming in there was a kind of speech made by Mr. Bradshaw to the king in this manner: I think I shall repeat the very words: 'Charles Stuart King of England, the Commons of England, assembled in Parliament, taking notice of the effusion of blood in the land, which is fixed on you as the author of it, and whereof you are guilty, have resolved to bring you to a Trial and Judgment, and for this cause this Tribunal is erected.' There was little reverence given to his Majesty then, which I was troubled at: he added this further, 'that there was a Charge to be exhibited against him by the Solicitor General;' I think this gentleman was so called at that time, and he called to him to exhibit the Charge; and this gentleman (the prisoner at the bar), did deliver an Impeachment, a parchment writing, which was called a Charge against the King at that time, which was received, and read against him.

*Counsel.* Did you ever see the Charge? [which was now shewn to Mr. Nutley.]

*Nutley.* My lords, I do believe that this is the very Charge, I am confident it is the same writing; I have often seen him write, and by the character of his hand this is the same.

*Counsel.* Go on with your story.

*Nutley.* My lords, immediately upon the delivery of this Charge of Impeachment, which was delivered in the King's presence, after it was read the King was demanded to give an Answer to it. His Majesty desired to speak something before he did answer to the pretended Impeachment (for so his Majesty was pleased to call it), he did use words to this purpose; saith he, 'I do wonder for what cause you do convene me here before you;' He looked about him, saith he, 'I see no Lords here, where are the Lords?' Upon this Mr. Bradshaw, the President, for so he was called, did interrupt his Majesty, and told him, 'Sir, saith he, you must attend the business of the Court; to that purpose, you are brought hither, and you must give a positive Answer to the Charge;' saith the King, 'You will hear me speak, I have something to say before I answer;' after much ado, he was permitted to go on in the discourse he was in, so far as they pleased. His Majesty said, 'I was in the Isle of Wight, and there I was treated with by divers honourable persons, Lords and Commons, a treaty of peace between me and my people; the treaty was so far proceeded in that it was near a perfection: Truly,' (saith he) 'I must needs say they treated with me honourably and uprightly; and when the business was come almost to an end, then' (saith he), 'was I hurried away from them hither, I know not by what authority; now I desire to know by what authority I was called to this place?' That is the first question I shall ask you before I answer the Charge.' It was told him by Mr. Bradshaw, the President, that the authority that called him hither was a lawful authority. He asked him what authority it was, the second time. It was answered him by the President, that it was the authority of the Commons of England, assembled in Parliament, which he affirmed then to be the supreme authority of this nation. The King said, 'I do not acknowledge its authority: authority, if taken in the best sense, it must be of necessity understood to be lawful, therefore I cannot assent to that; I am under a power, but not under an authority; and there are many unlawful powers, a power that is on the highway; I think I am under a power, but not under an authority; you cannot judge me by the laws of the land, nor the meanest subject. I wonder you will take the boldness to impeach me, your lawful King.' To this purpose his Majesty was pleased to express himself at that time, with more words to that purpose. The King went on to further discourse concerning the jurisdiction of the Court. Bradshaw, the President, was pleased to interrupt him, and told him several times, that he trifled out the Court's time, and they ought not to endure to have their jurisdiction so much as questioned.

*Court.* Pray go on.

*Nutley.* The gentleman at the bar, I did hear him demand the King's Answer several times; a positive Answer was required of the King; the King often desired to be heard, and he interrupted him again and again, several times; and at length it was prayed that the Charge that was exhibited against him might be taken *pro confesso*.

*Court.* By whom?

*Nutley.* By the prisoner at the bar, if so be that he would not answer. This, my lord, is the substance of what I have to say against him.

*Counsel.* Mr. Nutley, pray what discourse have you had at any time with the prisoner at the bar concerning this Impeachment?

*Nutley.* Truly, my lord, I know the gentleman well; I was well acquainted with him, and for the satisfaction of my own conscience, (for I was very tender in the business, and sorry he was engaged in it,) I went to him and did desire him to desist; I had discourse with him (for I was then a young student in the Temple, and had a little knowledge in the laws;) I desired him to consider the dangerous consequences of such a proceeding; I may say I did it with tears in my eyes, for I had a very good respect to the gentleman for his profession-sake, being learned therein: Truly, my lord, he did answer me thus: 'I acknowledge it is a very base business, but they put it upon me; I cannot avoid it, you see they put it upon me.' I had some discourse with him concerning the oath of allegiance, truly he was satisfied that this oath was against the business in question: I saw he was troubled at it.

*Counsel.* Can you speak of the manner of calling for judgment against the king?

*Nutley.* That, (I have already answered to it) was several times done; the king was brought several times to the bar, and at every time he was brought he was pressed to answer whether Guilty? or Not Guilty?

*Court.* By whom?

*Nutley.* By the solicitor then, the prisoner now at the bar. My lord, I remember his majesty was pleased when he saw he could not be heard to the discourse that he did intend to make of the whole business; saith the king, if you will needs press me to answer, I must demur to your jurisdiction: My lord, the answer that was given to that was this: Mr. Bradshaw, their then president, did say, Sir, saith he, if you demur to the jurisdiction of this Court, I must let you know that the Court do over-rule your demurrer; this was said, my lord, and judgment was pressed very often.

*Court.* By whom?

*Nutley.* By the prisoner at the bar.

*Cook.* My lord, may I ask him a question?

*Court.* Yes.

*Cook.* The first question is, Whether the parchment was delivered by me into the Court, or brought into the Court by Mr. Broughton the clerk.

*Nutley.* I do incline to believe, my lord, that it was brought into the Court, and deli-

vered by some hand or other the prisoner at the bar; I do believe it was, for I do remember it was written by one Price; I was told that was his name; that may be true; I believe it was brought into the Court, and delivered to the prisoner now at the bar.

*Counsel.* But did he exhibit it?

*Nutley.* Yes, my lords.

*Cook.* Did you see me set my hand to that parchment?

*Nutley.* No, my lords; but I believe it to be his hand.

*Cook.* Another question, Whether Mr. Nutley did hear me say concerning the opinions of those gentlemen, what they intended to do in that business?

*Nutley.* My lords, I do remember that I had often conference with the gentleman at the bar. I desired him to desist from the business, considering the dangerous consequences of it: Truly, my lord, I do well remember that he did say he did hope they did not intend to take away the king's life. Said I, if they go about any such thing, do you use your utmost endeavour to preserve his life: saith he, I did labour to that purpose, but they tell me they only intend to bring him to submit to the parliament.

*Cook.* It is said that I demanded judgment of his life; Mr. Nutley, I demand of you, whether I used the words of judgment against his life, but only I demanded their judgment?

*Nutley.* My lords, for that I cannot remember possibly to a syllable, but judgment was demanded.

*Court.* By whom?

*Nutley.* By this person.

*Cook.* I said the judgment of the Court, not against him, I meant judgment for his acquittal.

*Court.* Did you never hear him desire the Court that the Charge might be taken *pro confesso*.

*Nutley.* That I have said, my lord, it was urged by the prisoner at the bar against his majesty, that if he would not plead to the charge, that then the matter charged in it might be taken *pro confesso*. But, my lord, if you please to give me leave to add this one word more, my lord, I did hear him say at that time; he shewed me a paper that contained an Order of the Court, that did direct the very words that he should use when he came to deliver the charge; whether those words were in the Order I do not know.

*Cook.* Whether was I not directed by those gentlemen the very words I should speak?

*Court.* We are satisfied in that; he saith by an order that you shewed him, you were so directed. If you have any thing more, ask it him.

*Mr. Farrington* sworn.

*Sol. Gen.* Pray tell my lords and the jury, what was the carriage of the prisoner at the bar at Westminster, at the place they called the High Court of Justice.

*Farrington.* My lord, I was present about the 20th of Jan. 1649 at that which they called the High Court of Justice, and Mr. Bradshaw sat then as President; so much as I remember concerning the prisoner at the bar I shall acquaint your lordship. This gentleman at the bar, after the reading the commission, and directions by the President to bring his majesty (the prisoner they called him) to the bar; the king being brought, after silence made, and some speeches made by the President, this gentleman, the prisoner at the bar, having then a parchment in his hand, the substance of it was for levying war against the kingdom, he prayed that it might be read, and accepted as a Charge, in behalf of the good people of England. It was accordingly read, and afterwards being demanded to answer, after his majesty having given several reasons as to the jurisdiction of the Court four days, every day the prisoner at the bar demanded the judgment of the Court: And if his majesty would not answer to the Charge, it might be taken *pro confesso*.

*Counsel.* Do you know his hand if you see it?

*Farrington.* I have not seen his hand a long time. [Then the impeachment was shewn to the witness.]

*Farrington.* Truly, sir, this is like his hand.

*Counsel.* Do you believe it?

*Farrington.* It is very like it; I do not know positively.

*Counsel.* Did you hear the words *pro confesso*?

*Farrington.* Yes, my lord, several times after the first day.

*Counsel.* Did he interrupt the king in his discourse, as to say these words, that the Charge might be taken *pro confesso*?

*Farrington.* I do remember one day there was some interruption between the king and him, the king laying his cane upon his shoulder, desiring him to forbear.

*Cook.* You cannot say that I interrupted his majesty.

*Farrington.* I remember that the king laid his cane upon your shoulders.

*Cook.* Whether did I the first or the last day demand judgment, or that any thing might be taken *pro confesso*?

*Farrington.* The first day? No; but after the first day he did several days; you did the last day.

*Griffith Bodurdo*, esq. sworn.

*Counsel.* Sir, you have heard the question, give an account to my lord, and gentlemen of the jury, of the carriage of the prisoner at the bar towards his majesty during the time of the trial.

*Mr. Bodurdo.* My lord, I was all the time that the king was brought there before the court as a prisoner; I was present all the day, having a conveyance out of my house into a gallery that was some part of it over that court. I do remember that the prisoner at the bar



(whom I never saw before that time) did exhibit a Charge the first day against the prisoner at the bar, which was the king, in these very terms, 'the prisoner at the bar.' The Charge I heard it read then, I have not seen it since; the substance was this: That for levying war against the parliament and people of England, and namely, at such and such a place killing of the people of England, (I think Naseby and Kenton field was named in it, and divers other places were named in the Charge,) and the conclusion was, that he had done those things as a tyrant, traitor, murderer, and a public and implacable enemy of the Commonwealth. But this prisoner at the bar did exhibit the Charge, and the king did then, as you have heard he did, plead to the jurisdiction of the Court. The king would fain have been heard, but I think they did adjourn for that time. The next day he pleaded the same thing; I remember that the answer that was several times given; twice given by Bradshaw to the king thus, That the Court did assert their own jurisdiction; the second and third day, I do not remember any day after the first, but that the prisoner at the bar did demand judgment for the king's not pleading, and did several times make complaints to the Court of the king's delays; that he intended delays, and nothing else.

*Cook.* Pray, my lord, one question: whether, my lord, before he heard me speak of demanding judgment against the king, whether he did not hear Mr. Bradshaw several times say that the Court owned their authority, and that the matter would be taken *pro confesso*?

*Bradshaw.* I did hear the prisoner at the bar desire of the Court, that it might be so; and I heard the prisoner tell the king that it must be so.

*Joseph Herne* sworn.

*Counsel.* Mr. Herne, tell my lords what you know of the prisoner's carriage at the High Court of Justice, as they called it.

*Herne.* Upon Saturday, the 20th of January, 1649, it was the first day his majesty was convened before them. I could not come near the Court, only I saw him at a distance; I heard nothing but the acclamations of the people, crying out, 'God save your majesty' what was done in Court I know nothing of. On Monday I was there, and had a convenience to see and hear what was acted; and so his majesty being come to the seat appointed for him, the prisoner at the bar being called upon by the then President Bradshaw, he demanded of him what he had to ask of the Court. He was then talking with Dorislaus, and seemed not to mind the business of the Court. His majesty sitting near, takes his stick, and thrusts the prisoner at the bar upon his shoulder; and the prisoner looking back with a great deal of indignation turned about: I did hear Bradshaw speaking to him in these words, Mr. Solicitor, have you any thing to demand of the Court? Whereupon the prisoner at the bar did use

these or the like words: May it please your lordships, I have formerly in the name of the commons assembled in parliament, and the good people of England, exhibited a Charge of High Treason and other High Crimes, against Charles Stuart, the prisoner at the bar; (flinging his head back in this manner to him) he had there further to require of the Court, that he might be demanded to make positive answer by confession or denial; if not, that the Court would take it *pro confesso*, and proceed according to justice; this was on the first day I was in the Court. The President Bradshaw told his majesty, that he heard what was craved in the name of the commons assembled in parliament, and the good people of England, against him, by the now prisoner at the bar. The king stood up, but Bradshaw prevented him in what he had to say, telling of him that the Court had given him time to that day to know when he would plead to the Charge. His majesty proceeded to object against the jurisdiction, and said he did demur to the jurisdiction of the Court; upon which the President answered him, If you demur to the jurisdiction of the Court, you must know that the Court hath over-ruled your demurrer; and you must plead to your Charge, Guilty, or Not Guilty: Upon that the king asked their authority, and desired he might give reasons against it; he was denied it by the President; the President at last was content to tell him, that though he was not satisfied with their authority, they were, and he must; but to satisfy him, he told him in short, they sat there by the supreme authority of the nation, the commons assembled in parliament, by whom his ancestors ever were, and to whom he was accountable; then the king stood up, By your favour, shew me one precedent. Bradshaw sits down in an angry manner: Sir, saith he, we sit not here to answer your questions; plead to your Charge, Guilty, or Not Guilty: Clerk, do your duty: Whereupon Broughton stood up, and asked what he had to say, whether Guilty or Not Guilty? And President Bradshaw said, That if he would not plead, they must record his contempt. His majesty turned about to the people, and said, Then remember that the king of England suffers, being not permitted to give his reasons, for the liberty of the people. With that a great shout came from the people, crying, God save the king; but there was an awe upon them, that they could not express themselves as they would have done, I believe.

*Counsel.* What did Cook say to the judgment? Did you hear him press for judgment?

*Herne.* Yes, I heard these words from the prisoner at the bar, That if the king would not plead, his Charge might be taken *pro confesso*, and that the Court might proceed according to justice.

*Cook.* One question more, whether he often heard me speak those words, that it might be taken *pro confesso*, and to proceed according to justice?

*Herne.* You desired he might be held to his plea, confession or denial, that he might not be suffered to use any words to the jurisdiction of the Court

*Cook.* Whether he heard the Charge read?

*Herne.* I did not hear the Charge read; I was not there the first day. I heard you confess you had exhibited a Charge of High-Treason against the prisoner at the bar, which was then the king's majesty.

*Cook.* Whether I did not in the Charge conclude, that all proceedings might be according to Justice?

*Court.* Read the title and last article of that Charge. Which was accordingly read, and follows in *hæc verba*:

*The Title of the Charge.*

'The Charge of the Commons of England  
' against Charles Stuart, King of England,  
' of High-Treason, and other Crimes ex-  
' hibited to the High-Court of Justice.'

*The last Clause in the Charge.*

'And the said John Cook by Protestation  
' (saying, on the behalf of the people of Eng-  
' land, the liberty of exhibiting at any time  
' hereafter any other Charge against the said  
' Charles Stuart, and also of replying to the  
' answers which the said Charles Stuart shall  
' make to the premises, or any of them, or any  
' other Charge that shall be so exhibited) doth  
' for the said treasons and crimes on the be-  
' half of the said people of England impeach  
' the said Charles Stuart as a tyrant, traitor,  
' murderer, public and implacable enemy to  
' the Commonwealth of England, and prayeth  
' that the said Charles Stuart king of England,  
' may be put to answer all and every the pre-  
' mises; that such proceedings, examinations,  
' trials, sentences, and judgment may be here-  
' upon had, as shall be agreeable to justice.'

*Court.* Mr. Cook, will you have any wit-  
nesses examined touching the question you last  
asked?

*Cook.* No, be pleased to go on.

*Mr. Baker* sworn.

*Mr. Baker.* My lords, and gentlemen of the Jury, I was at the High-Court of Justice, as they called it, the first, second, and third days. Not to trouble you with the proceedings of Bradshaw, I will tell you what I observed of this gentleman; I have the notes that I took there, and pray that I may read them to help my memory. [Which was granted, and then he proceeded in this manner] That day, my lord, Mr. Cook told the Court, that he charged the prisoner at the bar (meaning the King) with Treason and High Misdemeanors, and desired that the Charge might be read; the Charge was this, That he had upheld a tyrannical government, &c. and for that cause was adjudged to be a tyrant, &c. and did then press that the prisoner might give an answer to that, and that very earnestly. The second day, my

lord, he told the Court, that he did the last day exhibit a Charge of High-Treason against the prisoner at the bar, (meaning the King) and that he did desire he might make answer to it; and he told them also, that instead of making an answer to the Court, the King had delayed the Court, but desired the King might make a positive answer, or otherwise that it might be taken *pro confesso*. The third day, my lord, he came and told the Court as before, that the King had delayed them, and then he charged him with the highest Treasons and crimes that ever were acted upon the theatre of England, and then pressed that Judgment might be given against him; and another expression was, that it was not so much he, but the innocent and precious blood that was shed, that did cry for Judgment against the prisoner at the bar: This, my lord, is the substance; there were other passages.

*Cook.* Whether before this time he had not heard something of an act or order proclaimed at Westminster? Whether there was any other word in effect used in that Charge more than in the Proclamation?

*Baker.* I did hear the Proclamation and Charge, and the substance of it; I have given an account of it, and I did hear you press upon it very much; the Proclamation, I heard of it, that it was made for the summoning of the Court, but I did not hear the Proclamation made.

*Cook.* That that was called the Act of the Commons for Trying of the King.

*Baker.* I did hear of the Act, but did not take notice of it.

*Mr. George Masterson* sworn.

*Counsel.* Mr. Masterson, pray inform my lords and the Jury what you know touching the carriage of the prisoner at the bar at the trial of his late majesty.

*Masterson.* My lords, and you gentlemen of the Jury, I was present in that they called the High-Court of Justice, upon the 22d, 23d, and 27th days of January, in the year 1649. I shall wave those circumstances which you have heard, and many of which I well remember and what I heard likewise between the King, who was then a prisoner, and the then president Bradshaw; but concerning the prisoner at the bar, this I very well remember, that upon Monday I heard him say he had exhibited a Charge of High-Treason against the prisoner, (then the King) and demanded now that he might plead to his Charge; I do very well remember, that after some passages between the King and the Court, the prisoner at the bar desired the King might plead to his Charge, or else it might be taken *pro confesso*: I remember upon the last day, the day of that fatal sentence, I heard the prisoner at the bar demand in the name of the Commons assembled in parliament, and all the good people of England, Judgment upon the prisoner at the bar, pointing at the King; this is all.

*Mr. Burden sworn.*

*Counsel.* Do you know who did examine the witnesses against the king? And were you examined? And by whom?

*Burden.* By Judge Cook, for so he was called in Ireland.

*Counsel.* Did he examine you as a witness against the king? Did he give you an oath?

*Burden.* Yes, my lord, and many others.

*Cook.* This is a new thing, I never heard of this before; where was it that I examined him? I had no power.

*Counsel.* No, we know that, but you were active.

*Court.* Where was it?

*Cook.* Whether there were not any others with me in the room? And where was it?

*Burden.* It was at Westminster-Hall, within the High Court of Justice.

*Cook.* Who was there besides me?

*Burden.* I cannot tell; Axtel, he was there, and I am sure Cook was there.

*Counsel.* Mr. Burden, pray tell my lords and the jury what questions you were examined upon, and what they tended to.

*Burden.* He examined me, and gave me my oath; there was eight or nine of us, we had been in the king's army in former times; this gentleman (Colonel Axtel brought us in, commanded us out of our company; I was in his company, and this gentleman) himself gave us our oaths; he asked us where we saw the king in action? I did reply to him, and told him, I saw him in the field with his army; he asked me many other questions that I could not tell him; he asked me whether I did see the king at Nottingham set up his standard? And I was never at Nottingham in my life; these were the questions.

*Mr. Starkey sworn.*

*Counsel.* Pray inform my lords and gentlemen of the jury what passed between you and the prisoner at the bar concerning the trial of his late majesty.

*Mr. Starkey.* My lords, this gentleman, now prisoner, and myself, have been acquainted a great while, being of the same society of Gray's-Inn; and truly, my lord, I confess I owe all my knowledge in the laws to that gentleman; when I came first he was accused for debt, and was pleased to do me, and several other gentlemen, now and then the favour to reason the law with us, and assist us in the beginning of the long parliament; that is, to give you an account of his being indebted, he did desire I would do my endeavour to get his protection. Near the time of the king's trial there was a gentleman with myself, one Samuel Palmer, of Gray's-Inn, which frequented his company, had several nights the opportunity of understanding the affairs at Westminster, and truly he himself did seem to us to count that a very ridiculous Council. I remember what he said one night, I think they are all mad; which was within two or three days before the king's trial; and in-

stanced how a fellow cried out to the lord Fairfax, that if he did not consent to the proceedings, he would kill Christ and him. After that I did not think he did go to this Council for employment, but out of curiosity. When the king came to trial, we heard that Mr. Cook was the person that was Solicitor, and acted that part that you have heard of; and during that trial, whether the second or third day, I cannot say that certainly, Mr. Cook came to Gray's-Inn that evening about ten or eleven of the clock at night, only upon some particular occasion, as he said; I being walking in the court in the walk before my chamber with another gentleman, I did see him pass out of a house to go back again; I thought it was he, called after him; 'Mr. Cook' said I; upon that he turned back and met me; I took him by the hand, said I, 'I hear you are up to the ears in this business;' 'no,' saith he, 'I am serving the people;' 'truly,' said I, 'I believe there's a thousand to one will not give you thanks.' Said I, 'I hear you charge the king for the levying war against the parliament; how can you rationally do this, when you have pulled out the parliament to make way to his trial?' He answered me, 'you will see strange things, and you must wait upon God.' I did ask him, but first he said this of himself; said he, he was as gracious and wise a prince as any was in the world; which made me reflect upon him again, and asked how he could press those things as I have heard? What answer he made to that I cannot tell. I did by the way enquire what he thought concerning the king, whether he must suffer or no? He told me, 'he must die, and monarchically must die with him.'

*Cook.* Whether was this after or before the sentence.

*Mr. Starkey.* It was before the sentence, for it was either the second or third trial; or rather in some interim of time before the sentence; for there was an adjournment for a day or two; but I am sure it was before the sentence.

*Court.* Mr. Cook, they have concluded their evidence, plead for yourself what you think fitting.

*Cook.* My lord, I have been a prisoner three months, I humbly desire to acknowledge his Majesty's and his Council's favour, that I was not put into a Jeremy's prison, but in the Tower, and not in irons; I give your lordships humble thanks for that; and truly, considering the nature of the charge, had it been in some other kingdom, they would have served us as John Baptist in prison; I thank you that I have a fair trial with the judges of the law, who are upon their oaths to do equal right and justice between our sovereign lord the king, and every prisoner, concerning matters of life and death; and likewise those noble lords, that though they are not put upon their oaths, but upon their honour, if they know any law to preserve my life, I trust they will rather save than destroy. My lords, I do therefore say as Paul said, my plea is much of that nature, against the law, and against Caesar, I hope I have not offended at all, and so I have pleaded Not

Guilty. The learned Counsel have examined several witnesses against me; and I humbly conceive that the matter will rest in a very narrow compass: the substance of the charge (so far as my memory will serve) doth rest in these three things, the other being but matter of form: That 1<sup>st</sup>, with others, should propound, consult, contrive, and imagine the death of the king. 2<sup>dly</sup>, that to the perfecting and bringing about this wicked and horrid conspiracy, that I, with others, did assume a power and authority, (as I remember) Power, I am sure, then to kill and murder the king; and 3<sup>dly</sup>, that there was a person unknown that did cut off the king's head, and that we were abetting, aiding, assisting, countenancing, and procuring the person, or words to that effect, against the form of the statutes, and so forth. I have twelve poor words to offer for myself in this business, wherein if I do not answer every thing that hath been particularly objected, I hope you will give me leave afterwards to offer it. First, I humbly propound this, that if it was not made appeal to your lordships that I did ever propound, consult, advise, contrive, attempt, of any way plot or counsel the death of his majesty, then I hope I cannot be found guilty within the statute of 25 Edward the third; for the naked truth Mr. Nutley hath in a great part spoke to; I was appointed upon the tenth of January, 1649, for to give my advice concerning a Charge, there having been upon the ninth a proclamation for the trial; and upon the tenth Mr. Steel, Dr. Dorislaus, and Mr. Ask, and myself, were appointed, and ordered to be of Counsel to draw up a Charge; here I have the Order attested by Mr. Jessop, and pray it may be read.

*Court.* They do admit the thing, that you were so assigned.

*Cook.* Then I humbly conceive, that that cannot be said to be done maliciously, or advisedly, or with any wicked intention in me, which I was required and commanded to do; acting only within my sphere and element as a counsellor, and no otherwise.\* The next thing is this, my Lord, that by law, words will not amount unto treason; we usually say, that

\* "Upon the trial of Coke, of Gray's-inn, who was of counsel against the king, and delivered in the Charge against the king in the Traitorous Court called the High Court of Justice; he objected that he did not draw up the Charge; but he only acted as a counsellor, and did only speak words to have the Charge read, and demanded Judgment against the king; and he said words did not make treason.

"It was resolved by the court, that if a paper containing treasonable matter, be indited by another, yet being known by Coke to contain treasonable matter, and being delivered by him as a Charge against the king to take away his life, this is an overt-act to prove that he compassed the king's death, which is the treason he is indicted for." Kelyng, p. 12. See also p. 92.

words may declare an heretic, but not a traitor; there were some statutes formerly, 1 Edw. 6, where words are made treason; but they are all repealed by 1 Maria, that nothing shall be treason but what is expressed in 25 Edw. 3. This objection will seem to lie, that these were words put in writing; and that I humbly conceive to be the greatest matter objected; to which I answer, 1. Whether there be any full, certain, clear proof, that that is my hand to the Charge, I must leave to you; two or three witnesses say they believe it, and that it is like my hand; that I leave to you, if that appear; yet, my Lord, that that is put in writing as done by another that is the dictator, and does dictate unto me; I humbly conceive, that for any man to write words, which in their own nature may be treasonable, if he doth but write them by the command of another, by speaking them after another, taking them upon rebound, that is not treason, because they do not discover a traitorous heart; those words of compassing the death of the king in the 25 Edw. 3, they are secret imaginations in the heart, and they must be manifest by some overt-act; that which was dictated, my Lord, unto me, that I had expressly prescribed me, what I should say, what words I should say; that I did not invent any thing of mine own head, of my own conceit; and therefore cannot properly be said to be malicious. The next thing that I crave leave to offer is this; that the pure and plain demanding and praying of justice, though injustice be done upon it, cannot possibly be called treason within the statute, then I hope nothing that has been said against me will amount to treason: for the words in the natural, grammatical, plain, genuine, and legal sense, will bear no other construction, as I humbly conceive, but (that whereas those gentlemen had his majesty then in their power a prisoner) that it was prayed by me that they would do him justice; I do hope that it will appear that I did give *bonum et fidele consilium*. It will appear, I hope, that some would have had a very voluminous and long Charge; that I was utterly against it, as conceiving that it was not fit and requisite that any thing should be put in; at least I durst not invent one word myself, but what was expressed in the Act for Trial; if your lordships will not admit it an Act, you will an Order, and so it will bear me forth, at least to excuse me from treason, because I kept myself to the words; whereas in that it was said that they should proceed according to the merits of the cause, I was against that, that I did not understand that; but according to justice, and that is but according to law, because the law is the rule of justice I do humbly hope (my lord,) that if by law, when words may be taken in a double sense, they shall always have the more favourable interpretation, much more when the word, in the legal sense, will bear it; when it is prayed they will proceed according to justice, I hope it will not be inferred there was any intention of doing injustice when justice was re-

quired. And therefore (my lord) the next word that I would offer is this: If, my lord, in all tragedies which are as we call them, judiciously or colourably, there are but these four actors, accusers or witnesses, the jury, judges, and executioner; if I be none of these, I cannot be guilty of treason. I hope I may safely say according to law, that I had not a hand at all in his majesty's death. My lord, the court and counsel it is very true, they do aim at the same thing; the counsel *requiendo justitiam*, the other *exquendo justitiam*, the end being the same, to have justice. If when justice be demanded, and injustice be done, what is that to the counsel? We read in the sixth of John, concerning Pilate, 'Knowest thou not' (speaking to Christ) 'that I have power to crucify thee, and have power to release thee?' My lord, I humbly answer this to that which seems to be the most material part in the indictment, That we did assume a power; my lord, I did not assume a power; I hope it will not be said that the counsel had any power: *eloquentia* in the counsel, *judicium* in the judges, and *veritas* in the witnesses, xxvth of Acts, Tertullus, that eloquent orator, accused Paul; Paul answered for himself, and it is said, 'Festus being willing to do the Jews a courtesy, he left Paul bound;' it was not the counsel that left him bound. His majesty was never a prisoner to me, and I never laid any hands upon him; if any witnesses have spoke of any irreverence, I must appeal to God in that I did not in the least manner carry myself undutifully to his majesty, though one of the witnesses was pleased to say that I said these words, 'That there is a Charge against the prisoner at the bar;' it was not said the 'prisoner at the bar;' there was not one disrespectful word from me. There is a case in the third Institute of my lord Coke, it is to this purpose, that one wilfully and knowingly forswore himself; the case was put to inveigle the Court; and though the Court does injustice upon a false oath, it is not injustice at all in the witness, it is perjury in him; if there can be no injustice in a witness, much less a counsellor can be said to have his hand in the death of any, because he has no power at all; this must needs follow, that if it shall be conceived to be treason for a counsellor to plead against his majesty, then it will be felony to plead against any man that is condemned unjustly for felony. The counsellor is to make the best of his client's cause, then to leave it to the Court. It is said, I should demand judgment; I do not remember that, I leave it to you, but still to demand justice. Counsellors, they do engage in business before they do rightly understand the true matter of the fact: it is part of a Serjeant's oath, that so soon as he does discover the falsity of the cause, he should forsake the cause. My lord, by what Mr. Nutley hath said it appears, and I have many witnesses in the country, three or four in Leicestershire, would have spoken fall to this, that (my lord) there was not before the sentence of the king (to the best of

my knowledge) a word spoken by any that they did intend to put him to death; I say, to my knowledge; and, my lord, when judgment is demanded, is it not twofold; of acquittal or condemnation? If those that then were entrusted with the power of judicature, if they did not know any law to proceed by to take away his majesty, then I demanding their judgment, it doth not appear to be my judgment; and I refer it to the learned counsel, that counsel many times at the assizes and other courts have been sorry that the verdict have been given for their clients; when they have known the right lay on the other side, and so I might in this. The next thing I humbly offer, is, that if in right reason, considering the condition his majesty was then in, the advising to draw up the charge was rather to be looked upon as a matter of service than disservice, then it cannot be called treason; it is very true, my lord, that a very little small Overt-act will amount to a treason; and, my lord, had this been in times of peace, and had his majesty been no prisoner (now he was under the power of an army), this had been great treason; but he being a prisoner (not by my means, for I was no swordman), what can a man that knows himself innocent, being a prisoner, desire more than a speedy trial? So that making the trial more speedy cannot be said to be done traitorously. A trial doth follow imprisonment as naturally and necessarily as the shadow doth the body. If any man shall desire and be instrumental in bringing him to a trial which might acquit, rather than condemn him, and so humbly pray proceedings according to justice, this will have, I hope, a better name than treason. I am much beholden to his majesty, and this honourable parliament, for the penning of the Act of Indemnity, which, I hope, my lord, you will give me leave to take notice of.

*Court.* Open as much as you will of it.

*Cook.* My lords, the words that I would make use of are in the beginning; treason, murder, and other felonies that are spoken of, they are said to be counselled, commanded, acted or done; in the preamble, which is as the key to open the mind and meaning of the law makers, it is said, that all persons shall be pardoned for all, excepting such as shall be named, and in such manner as they shall be excepted; and then it comes, provided that this act shall not extend to pardon such and such persons, and by name I am one; and it is said, all which persons, for their execrable treason, in sentencing to death, or signing the instrument for the horrid murder, or being instrumental in taking away the precious life of our late sovereign lord, Charles the first, of glorious memory, are left to be proceeded against as traitors to his late majesty, according to the laws of England, and are out of the said act wholly excepted and foreprized. There is not any thing offered against me upon the two first great words, which are sentencing and signing; that which I have to do to endeavour to clear myself is this, being instrumental in taking away the

life of his said majesty: First, I humbly offer this to the Jury's consideration, That where the parliament doth begin to fix the treasonable part, there, I hope, and no otherwise, this honourable Court will fix it: If it had been the intention that counsellors, advisers, and such as spoke their minds sometimes in the business, you know that was epidemical, many words were spoken which cannot be justified; whether naturally it would not have followed, that all such persons, for their counselling, advising, or being instrumental, are left to be proceeded against as traitors, I hope you will take that into consideration; concerning the words, 'or being instrumental,' observe it is not said, 'or being any otherways instrumental;' but 'sentencing, signing, or being instrumental;' if therefore the word, 'instrumental,' be not of a general comprehensive nature, then all this evidence which hath been given in against me, being before the sentencing and signing, will fall to the ground; that this is the legal genuine, and grammatical sense, and cannot be any otherways than as particular, as if it were the sender, signer, and executioner; which if it had been so, nothing of the evidence would have reached me. My argument is this: Such a use is to be made of an act of parliament, that no word may be frustrate and insignificant; but if this interpretation shall be put upon it, 'sentencing, signing, or being any way 'instrumental,' then the words sentencing and signing need not have been. If 'instrumental' will carry the words 'sentencing and signing,' then these words will carry no force at all; especially, my lord, when there is no need of any retrospect at all; if it be so, I know not how far it may look back; there is no necessity of putting any comprehensive generality upon this word 'instrumental,' but that the plain natural sense will be this, that those that did sentence and sign, and those that were instrumental in taking away his life, that is, those that did abet and comfort that person unknown, or justify, or countenance him, which is after the sentencing, and not before, in the legal sense. Next, I conceive, that a counsellor cannot be said to do anything *vi et armis*.

It is said, That by force and arms I did abet, &c. it is rhetorical, to say that words may be as swords, but legal it is not, unless there be something *vi et armis*; in the grammatical sense, instrumental in taking away the king's life; it is not said instrumental in order to take away the king's life, or instrumental in advising to take away the king's life, but instrumental in taking away the king's life. My lord, the next thing is, that there cannot be any thing he said to be done by me, first not *false*, because in that sense it must have the operation of mendacity; that there must be a lie told in it; I did nothing but what I was required to do, to set down such and such words; I did not invent nor contrive them, I heard nothing of it till the 10th day of January. My lord, for *malitiosè*, that I did not any thing maliciously, I hope it will appear in this; what I

then spoke it was for my fee; it may be called *avaritia*, but not *malitia*; for the law will imply a malice, when there is no other express ground or reason why the thing was done, but here was an express ground to speak for my fee. I hope the Jury will take that into consideration. Then, secondly, I was not judicial in the case, I was not magisterial as any officer, but ministerial. As touching examining of Witnesses, it is a great mistake, the Court had power to give an oath; I might be there, but I had no power to give an oath; but whether I might ask any question, I do not remember, but that I should give an oath, that is a falsity. Then, my lord, for *proditorie*, I hope there is nothing at all that appears to the jury; so that there was no malice nor traitorous intention in the thing. There are some matters of law which I desire your lordships will give me leave to speak to, and that your lordships will be of counsel with me. I would offer something concerning his majesty's gracious Declaration from Breda to the Parliament (I was then in Ireland); I did put in a Petition to the honourable Commissioners before any exception was, that I might have the benefit of that Declaration; I did lay hold of it: My lords, there are two things in that Declaration that I would offer. His majesty saith, that for the restoring of the king's peers, and people of the kingdom to their just rights and liberties, he will grant a free and general Pardon to all, excepting such as shall be by parliament excepted; and within three or four lines after it is said, a free parliament; though I do not in the least question the legality of this parliament, yet, my lords, to this particular purpose, whether the parliament that was to except ought not to be a parliament that was to be called according to his majesty's writ, according to the laws of the kingdom, I humbly conceive it will bear that; though his majesty is pleased to confirm this, yet it is not such a parliament that was to except; that I offer to your lordships. My lords, That that I would humbly make bold to put for myself, because it is the privilege of one in my condition, is this: There is, my lords, many lords, the earl of Essex\*, the earl of Southampton, and others, that were adjudged in the 44 of Eliz. 3 Institutes. They did traitorously and maliciously conspire to take her majesty prisoner, and to remove her counsellors from her, which were found guilty, and suffered accordingly: The reason is, That because thereby, if it had been done, they had despoiled her majesty of her regal government; and the case is instant in Philip, who was a nominative king, that it was not Treason to have attempted any thing against him. My lords, his majesty being a prisoner without any hand of mine, I giving advice according to what was dictated to me to bring him to that trial, whereby he might have been acquitted, and so set at liberty, I hope that will not be said as instrumental.

My lords, I humbly shall offer but two words,

\* See No. 70, vol. 1, p. 1833.

1. To the honourable Court, then to the Jury. The words 25 of Edw. 3, and so the exposition of the learned judges have been from time to time, that there shall be no semblable treasons made by presumptions or strains of wit, but those treasons specified there: It is said, if a husband do kill his wife, or a wife kill her husband, a master should kill his servant, or the servant should kill his master, that that shall be petty treason; a child did kill his father, though that was looked upon as a great sin, yet the judges did not presume that to be treason, because it was not in the very words; this being an extraordinary case, to write a thing after another doth not appear that there was a malicious heart in him that did write. There hath been the act of parliament that doth call these courts tyrannical and unlawful courts; but, my lords, a tyrannical and unlawful court, is a court *de facto*, though not *de jure*; if a court be not a just and lawful court, it cannot be said but that it is a court: We say a thief is a true man, though morally he is not so; this was a court, officers attending on them; some said they had authority; and therefore for one to come and act within his sphere, not to act out of that, nor do any thing but what he had a prescript form appointed him, I hope that will not be found to be within the letter of the law. I have been told, (how true I cannot tell), that there have been some votes in the honourable parliament, that those that did only counsel or advise, that those were not to be looked upon as Traitors; I have been told so, that those that did only speak as counsel for their fee, who were not the contrivers of it, the parliament did not intend they should be left to be proceeded against.

*Court.* This letter that was sent from the commons to the king at Breda, they speak first of the violation that was put upon the parliament, and of the base and horrid murder of his late majesty. It is said that the parliament (I conceive they meant of the remaining part), they were not guilty, but some few ambitious, bloody, guilty persons, who contrived the same, and others misled by them.

*Cook.* The other matter of law is this: I say, that I do hope that though that Order, which I was about to produce concerning my acting, that if it may not in a legal sense any way be said to be an Act of the parliament and commons, yet it may be said to be such an Order to bear out those that did act according to it, because there was an authority *de facto*, otherwise it were not lawful for any man to exercise his profession during their power. I hope counsellors might then exercise such profession, as well as others. My lord, though I should suffer myself in this case, I should be loth the honourable profession of the law should. I think I was in my sphere, acting as a counsellor. Now, gentlemen of the jury, that which I have to say to you is an evidence concerning matter of life, it must be so clear, that every one that hears it may understand it. It is called an evidence, because it is evident; it is

one reason why prisoners for their lives are not allowed counsel for matter of fact, because the evidence is, and ought to be, so clear and plain that every one should be satisfied, both jury and standers-by; and it is a proper word to say the prisoner is convicted, that is as much as, his mouth is stopped; and therefore I say, truly as I hope I may speak it to you without offence, as Jeremy in another case, when some of the people would have had them put him to death, 'As for me, behold I am in your hand,' 'do with me as seemeth good and meet unto you,' Jer. xxvi. ver. 14, 15. Saith he, 'But know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon yourselves.' I hope you will not willingly be guilty of any such thing; I must leave it to your consciences, whether you believe that I had an hand in the king's death, when I did write but only that which others did dictate unto me, and when I spoke only for my fee; and this I would be bold to say, though the argument is not so directly confessed, that human justice (I do first say as this my principle and opinion is), that as every man ought to pay his moral debts, so all political debts; there is

debt due to human justice, so political: if the Lord should have suffered me to have been drunk, and killed a man, for which I ought to have died, instead of speaking for myself, I would have rather interested the jury to have found me guilty; I think these things ought to be answered, political debts. When I was in Ireland, and had opportunity of going away, if I thought I had been guilty I might have done it; my name is put into his majesty's Proclamation. It is true, I was a prisoner three or four months before, so that I could not render myself. To what end should that Proclamation mention my name? It was said I obscured myself, but I did not. Human justice doth never punish so much for expiation as for prevention; the judgments of the learned Aquinas, Grotius, and Amesius, and many others, that if a man doth kill a man, commit any thing worthy of death, though he doth repent never so much, yet that others may be deterred from committing such acts, the magistrate is bound to put him to death. But where there is not such a thing, there it is different; though it is said the land is defiled, that is, where there is danger that the like may be committed again; now all things are settled, there is no danger at all; now there can never come such a case as this again; I say, my lord, what I acted I did as a counsellor, I had no malicious intention in it. Mr. Nutley bare testimony so far, that I told him, 'there was no intention of putting his majesty to death;' I only did say, that 'I desired them to do justice;' and I hope what was done was their act, not mine, and so I leave myself to your lordships.

*Court.* Silence commanded.

*Sol. Gen.* My lords, this gentleman who is the prisoner at the bar requires such an evidence of the fact as may be evident, he saith

so evident as may be as clear as the sun ; I think that evidence is not to seek ; but if he must never be convicted till he be so far convinced as to be speechless, I believe we may stay long enough ; nevertheless if he be willing (as he saith he is) to pay his debts to political justice, we shall quickly give him the total sum. That which he hath said hath been like a lawyer, the best that his case will bear, but withal it is a great aggravation to his crime, that he that knew the law so well, should so much transgress it. He began, ' Words do ' not make treason ; ' he mistakes ; his charge is not for words ; gentlemen, his charge is for compassing and imagining the death of the king, and the evidence of that charge is meeting in that assembly, and the part that he bore in that assembly. And yet, my lords, he will be much mistaken too (under favour, and with submission to your lordships judgments, and those that hear him), if they think that in all cases it is a general rule that words are no treason ; for when a man shall proceed to declare the imagination of his heart, as to exhort and persuade men to effect that wicked thing, the killing of the king, certainly there cannot be a greater overt-act than these words, nor a clearer evidence of such an imagination, for ' out of the abundance of the heart the mouth ' speaks.' My lord, to say that the demanding of justice is not treason, though injustice do follow, is a very weak gloss upon a wicked action. The subject matter was a charge of High-Treason against the king ; the conclusion of the charge was a Protestation, by which he saved to himself a liberty to put in a new charge, if that was not sufficient ; upon the whole he desires, that the king, as a traitor, may be brought to justice. Judge ye now, gentlemen, upon the nature of this demand, whether this were such a demand of justice as might end in acquittal ; whether he that presses that this charge may be taken *pro confesso*, did mean that whett the Court had recorded it, they should acquit him when they had done ? My lords, to say there are four actors in this case, the witness or accuser, the judge, the jury and the executioner, and that he is none of them, and therefore in this case he cannot be a traitor ; still, my lord, that is to beg the question ; for if he be one of them that did assemble in the place, and were any instrument of that assembly, he hath thereby given an evidence of an overt-act of his wicked heart ; and when all is done, this poor gloss amounts but to this, ' I am none of those four ranks, ' that is, there were others worse than myself, ' and therefore I am none at all.' My lord, the thing that he hath mainly insisted upon is the Act of Indemnity ; my lord, he doth observe that his name is excepted in that Act ; that he doth hope that it is so penned, as by the favour of the parliament it may reach his case ; and he hath argued very much upon it, and he speaks as if he did believe it himself. But surely there is no colour for that interpretation, that he should step out of this proviso,

by the very Act of Indemnity, that was made on purpose to bring him in by name ; the words are, ' Provided that this act, nor any ' thing therein contained, shall extend to pardon, or give any benefit to John Cook,' &c. ' all which persons, for their execrable treasons in sentencing to death, or signing the ' instrument for the horrid murder, or being ' instrumental in taking away the precious life ' of our late Sovereign Lord King Charles the ' first, of glorious memory, are left to be proceeded against as traitors, &c.' First, my lord, this general and clear answer, I conceive, is to be given, that the prisoner at the bar being by name excepted out of the Act of Indemnity, by the *Proviso* mentioned in it, although the subsequent lines that follow be the reasons why the parliament do except ; yet if it be within the very words of the exception, whether he be in the reasons that moved them to that exception, is not material ; if he could distinguish that he was not instrumental in that sense, to which he labours to restrain this *Proviso*, he can but say this : the parliament was mistaken in their reason, but not in their conclusion ; but he is directly within the exception, and the reason of it too, for the word instrumental goes as far as can be, and he is properly and literally, in the strict notion of the word, an instrument of the death of the king : the king could never have been brought to death, if not to the bar ; never had been sentenced, if he had not been impeached ; that impeachment could never have been taken *pro confesso*, nor the impeachment itself delivered, if he had not delivered the one, and pressed the other : he that brought the Ax from the Tower was not more instrumental than he : and besides, a lawyer as he of great understanding, and of good parts, he knows very well there are no accessories in treason, but he that acts any part in so wicked a conspiracy, let him begin at what end he will, he stands responsible for the utmost consequence of it ; and in effect the very penning of this *Proviso* is an express judgment of parliament, that he was instrumental ; but that is not to be pressed.

The next thing he doth insist upon is the Declaration of his majesty, that he sent from Breda, which he saith he laid hold upon ; here lies the weight of his answer : the king writes his letter to the parliament now sitting, that he doth purpose, for the quieting of the hearts of men that may be in doubt, to pardon all persons all crimes of what nature soever, either against himself or royal father, excepting those which shall be by act of parliament excepted ; and, my lord, he doth say, and modestly presses, that he doth conceive the meaning of that is, to pardon all persons what crimes soever they have committed, except such as by a free parliament shall be excepted ; a legal parliament, called by the writ of the king, which this parliament is not. To that I give these answers : first, my lord, I do say that this letter of our gracious sovereign from Breda is itself undoubtedly is no pardon in law for treason ;



that cannot be without the broad-seal. Next, a pardon under the great-seal in such a form of words as this is, would not be a pardon for treason, for that must not be pardoned by implication, but by positive words; so in the case of sir Walter Raleigh, a commission directed to 'our well-beloved subject' would not pardon the treason of which he was condemned. In the next place, this letter at the most is but a pardon in honour, which must always be taken according to the meaning; and that the king's honour may be for ever sacred, I say, this letter doth no way help the prisoner at the bar.

First, it is plain by the very superscription of this letter in which the Declaration was inclosed, that it is directed to the Speaker of our House of Commons in Parliament assembled; which cannot possibly be expounded of any other parliament than that which was then sitting, to whose Speaker it was written.

Secondly, the letter itself says, 'we have left it to you to provide for Security and Indemnity;' and again, 'if there be a crying sin for which the nation may be involved in infamy, we cannot doubt but you will be as solicitous to vindicate it as we can be.' And then in this very letter encloseth that Declaration, upon the penning of which the prisoner so much relies: now lay all together, and it is clear the parliament meant by the declaration, must be the same parliament which was meant by the letter; and that was this very parliament whom the king intended to trust, both with indemnity, and with the vindication of his father's death, and to be the dispensers both of mercy and justice in this particular. Another thing is this, this very parliament, as the prisoner observes, they did go to the king according to his gracious letter, and in the behalf of all the good people of England, they did lay hold of the king's mercy in his Letter and Declaration, and prayed that this claim by their Speaker, in behalf of all the rest of the commons of England, might be effectual to all purposes, and for all persons other than those that should be by themselves afterward excepted, according to their requests: his majesty accepts their petition, and makes proclamation, that his pardon should extend to all but such as they should except: what can be more clear and evident, than that this is the parliament which the king did mean to be the very parliament to which the letter should have reference till the Act of Oblivion was passed? Again: the late transactions of these twelve years past had involved so many persons, that we could scarce find a man but he had need of mercy; nay, this very parliament to which this letter was written had need of indemnity; and is it probable in the nature of the thing, or can it be understood by any man, that the king writing to this parliament and offering them pardon and indemnity, should mean such a pardon and indemnity as a future parliament, to be called by his own writ, should be willing to afford them? Whose hearts would have been satisfied with so contingent a security?

My lords, upon the whole matter, by what the king hath said in this letter, and by what the parliament hath done in pursuance thereof, and by what the king hath proclaimed, it is to my understanding as clear as the noon-day, that the honour of the king is not concerned at all in the exemption of the prisoner at the bar; and for the cases of my lords of Essex and Southampton, which he hath cited, they make against him; they were condemned because they endeavoured to imprison the queen, and to remove her counsellors, of which very fact the prisoner is in law guilty too: and then the case of king Philip, the husband of queen Mary, makes nothing for him neither, unless he will speak out, and tell us plainly, that because by a former violence the king was made a prisoner, he became but like a titular king, as king Philip.

In the next place he saith, my case is out of the law, I acted as a counsellor in my own particular for my fee; it was *avaritia*, but not *malitia*, nor *jalsd*, *malitiosè*, or *proditorie*: but he must know, that no man hath, or can have, a lawful calling to pursue the life of his king; and the law implies malice; for *malitiosè*, and *proditorie* are not only words of course, but of truth too, in this case; else it were as much as to say, that no counsel can be guilty of high treason, than which nothing can be more absurd: my lord, for that which he said last (for I must omit some things, and give him leave to take the advantage of it), to stand upon it, that the place was a court, such a one it was that he was not answerable for the constitution of it; if it were not in a legal sense, it was such an Order as might bear him out, that is, with modesty and good manners to justify high treason; it is not with such insolency as some others before him did it, but it amounts to that, that an Order of a few persons that first made themselves a parliament, and then made a court of justice, had officers, and met together, and perfected so ~~great~~ treason; I say, that this Order to bear him out is impossible. He that is a lawyer, he must account to the laws for what he hath done; if the authority were not lawful, he cannot but know that this which he calls the Parliament was so far from a legal authority, that it was one part of the treason that he did assist such an assembly.

Gentlemen of the Jury, This is your own case, here is a Charge that is exhibited by the prisoner at the bar, as he saith, in the name of all the people of England. Look on it, for you are some of them if you own it; then it may be true what he hath said; but I hope you meet here to tell this nation, and all the world, that the people of England had no hand in that Charge; do but consider how that this prisoner at the bar had hunted the life of the king, how he did fish out and examine evidence, whether the king set up his standard at Nottingham, was at such a place, and such a place; to what end is all this, but with design of blood? Were these things to be produced against the king, and then judgment to be de-

maunded that he may be saved? Is it not plainly proved to you by witnesses, how he did exhibit the Charge, press it, aggravate it, desired it might be taken *pro confesso*, was afflicted with the delays, how angry he was when he was interrupted? Is it not proved to you, that he was at first against the thing, and said, 'It was a base business?' When he was engaged in it said, that he was 'a servant of the people of this kingdom?' What doth he do at last, when the thing had gone far? he speaks that which is the only truth which I have heard yet from him, 'He must die, and monarchy then must perish with him;' from which event, good Lord, deliver us.

*Sir Edward Turner.* My lord, the substance of the Defence that the prisoner hath made at the bar, with much skill and cunning, may be referred to two heads. The first to the statute of the 25th of Edw. the 3rd, the second to the late Act of Oblivion: for the first, my lord, he saith, that his fact is not comprized within that statute; saith he, I did never conspire or

that would be a consequent of their actings. It was expressly proved, that himself did say that the king must die, and monarchy with him: but, gentlemen, though he had said true, that it had not been proved, or that he did not believe that would be a consequent, yet, my lord, I must tell you, that every step of this tragedy was treason; the summoning themselves, that was treason; every proceeding upon that was treason; the summoning of their meetings in the Painted-Chamber, coming into Westminster-Hall, every person as instrumental, those that came to act the least part in that tragedy, were every one guilty of treason; what, saith he, I acted as a counsellor for my fee; it was that fee that Judas had, the 30 pieces of silver, that made him hang himself. He goes further, and tells you, there must be no semblable Treasons, this is ~~act~~; the conspiring and imagining the death of the king, that is the treason that is mentioned in the act; treason by the common law; though this be not named the killing of the king; yet all these proceedings are demonstrations to you there was a secret imagination to kill him. Then to the Act of Oblivion, his argument is, that because the act saith, that if they had sentenced, signed, or been instrumental in the death of the king, that they should be excepted; but it is not said, or 'otherwise instrumental;' that this therefore should refer to subsequent, not precedent acts, that is a strange exposition; take it grammatically, it hath the most large construction, instrumental, more large than if they had said otherwise, for it doth comprehend every thing: there having been so full an answer already, I will be short; I will not meddle with his civil debts, but with his political: if a man kill another, though he do, repent, the magistrate must do justice in *terrorum*. Though he doth repent (I hope in God he doth so), the magistrates, your lord-

ships, must do justice in *terrorum*; I desire that justice may be done upon that man. He said it was no treason to demand justice against the king, because he did but demand it; I hope he will think it no unkindness in me to desire judgment against him, because it is just.

*Mr. Wadham Windham.* As I understand the prisoner at the bar, the chief argument which he shelters himself under was his profession, which gives a blast to all of us of the long robe; I will not misface his arguments, saith he, here was a Court, I was appointed Solicitor; and saith he, for men to practise before those that have not a proper judicature, it is not felony, murder, or treason (I would not willingly misface his argument), and that I was appointed, and the words dictated to me; and a counsellor carrying himself within the compass of his profession is not answerable; but if he will exceed his bounds, his profession is so far from sheltering him, that, as it has been opened, it is very much an aggravation; it is the duty of a counsellor to give counsel; if a man shall come to me and ask counsel, and I shall counsel him to kill a man, am not I accessory to that murder? Words, by his argument, will not amount to treason; if the fact follows, I am as guilty as if I did the fact; in point of treason, it is all one as if I had done that very act. If Mr. Cook did advise that act, or was instrumental, he is as much a traitor as the man in the flock that did the execution. For his profession, truly, my lord, I do not think that a counsellor is always bound to know the patent of him that sits as judge, that will not be his case; here was no ordinary warrant of law to carry on justice: Grotius saith, in case of necessity for carrying on justice, there may be many things allowed: I pray where did Mr. Cook read of such a Court as a High Court of Justice? There was never such a High Court of Justice read of in the law; then as this was a mock Court, so under good favour it was a mock jurisdiction. Was there any law under heaven to put the King to death? Is it not out of the compass of all Courts whatsoever to do it? and under good favour, my lord, this is but to shelter a man's self under colour of justice to do the most execrable treason in the world; I have no more to say to you.

*L. C. Baron.* I would repeat the evidence and your answer to you; if you have any thing new, speak to it.

*Cook.* This is new; it was said by one, that if there had been no Charge, there had been no Sentence given in the case; I say, that the Indictment or Charge is no part of the Trial, by the statute of Magna Charta: The peers of the land shall be tried by peers, but are indicted by the country; I conceive, by what they have said, they do make me causal of the King's death. It is said in the Indictment, there was a power; I say this, I did not assume any power; it cannot be said, if counsel he come in to an unlawful power, that he takes the power, but stands with respect at the bar. At assizes judgment passes, the clerk of the assizes

be is not instrumental in taking away life. For that which Mr. Starkey should say, that I should say, 'The King must die, and monarchy with him,' I humbly beg that the Jury would take notice of what Mr. Nutley said, that I told him there was no intention of taking away the King's life; and besides, it is but a single witness. I hope there must be two witnesses in point of law to convict a man of High Treason.

*L. C. Baron.* Mr. Cook, you said right but even now, that if there was any thing in matter of law which the Court knows of, which may be of advantage to you, they are of counsel to you, and so they ought to be.\*

*Cook.* I thank your lordships.

*L. C. Baron.* I shall repeat the whole evidence, and begin with that first (we are upon our oaths) The witnesses that are against you, I took notice of them; you have had a great deal of liberty, which you have made use of civilly; but, sir, for the fact, I think it is a great deal more full than as you have answered. First, the first witness produced against you was Mr. Nutley (I shall speak only the materia parts that concern your Charge): he swear expressly, that he saw Price a scrivener writing a Charge in the Court of Wards, that he saw his Charge in your hands; he saw afterwards when the King of blessed memory was brought as a prisoner, that there you delivered the Charge in; there is more than words: you delivered that Charge in, that alone is an overt act; then there were nothing else in that case, that a man in a paper should call the King Traitor, Tyrant, Murderer, and Implacable Enemy, as there the words are, and he deliver this paper, and this he read; if this be not an overt act of imagining and compassing the King's death, I do not know what an overt act is: and he gives further evidence; if I mistake, take free liberty to interrupt me.

*Cook.* Sir, they were not my words, but their words that commanded me.

*L. C. Baron.* This I say, that this very thing alone, such a paper approved by you, delivering this paper to an assembly, and requiring it may be read, this is an overt act to prove the imagination of your heart for the death of the King; the reason is, if the King should be a Tyrant, a Traitor, &c. it stirs up hatred in the people, and the consequences of that hatred is the death of the prince. The next thing that Mr. Nutley said, was this, he said that you demanded positively judgment against him, against the blessed King, then prisoner at the bar. I remember you said that you did demand judgment, but that you did not demand judgment against the King; take it so, whether you did, or not, (though you shall find in some other witnesses that I shall repeat, that you said judgment against the King), the consequence will be the same; who could you demand judgment against but the King? he was the prisoner: because he did demand a further hearing by the Parliament, you urged that his

Charge might be taken *pro confesso*, then it must needs be judgment against the King; it is effectively and implicitly the same. He went further, and that was, that being your friend and acquaintance, and acknowledging your parts as a lawyer, (which truly I do very much know myself, and do know this gentleman to be a man of very great parts in his profession), he had familiar acquaintance with you; he told you what a base business it was, and you did yourself acknowledge it; said the prisoner to Mr. Nutley himself, It is a base business, but they put it upon me. He did discourse further to him of the Oaths of Allegiance and Supremacy, which he knew very well, no man better; this gentleman, he very ingeniously confessed it, saying, I confess it is so, they put me upon it, I cannot avoid it; but then excuses it, I am the servant of the people: Afterwards he pressed the King to answer positively, whether Guilty or Not Guilty; the pressing of the King to answer, what was it in effect but to hasten judgment? and that was to hasten his death; so that this is the substance of Mr. Nutley's testimony, that he pressed judgment; judgment was demanded by the prisoner now at the bar; it is not only demanded, but pressed, and all the current of the witnesses at several days are to this purpose. It is true (that I may repeat the whole for you, and against you), that this gentleman, the prisoner at the bar, when Mr. Nutley did urge this to him, said he hoped they did not intend to take away the King's life; I verily believe they do not intend to take away the King's life; I hope they do not. But, Mr. Cook, it is no excuse to say you 'hope, or you believe, they will not, &c. How far it may be in such a crime something in extenuation *in foro cali*, but not *in foro civili*; you opened it yourself, that if a man should go about to take the King prisoner, it is treason; the law adjudged that to be treason; when you knew they would condemn him as a Tyrant, Murderer, &c. you must easily believe what would follow such a condemnation, truly death; that is no colour of excuse *in foro civili*. Farrington swears to the same purpose, that he saw you having a parchment in your hands, delivering it in, and prayed it might be read as a Charge of the people; you did not speak, I deliver this in, from those that delivered it to me; that was not in the paper, that you said of yourself; my brethren will tell you, all this is an apparent point of the imagination of your heart; at that time he swears the same thing, that you did desire it might be taken *pro confesso*. Mr. Bodurdo is the third, he swears the same thing too, that you exhibited a Charge of High Treason against the prisoner then at the bar, and tells you the substance of it; he saith that all but the first day you demanded judgment for not pleading to the Charge; he adds that you complained of the delays; I am sure that was not dictated to you; that could not be thought that you should desire judgment for the prisoner: It is very true, which you say for yourself in that, that you did not demand it first, till it was demanded by the

\* See the Note to Don Pautaleon Sa's Case, *supra*, p. 466.

court; Mr. Bodurdo tells you, and so it was granted the first day, that Bradshaw only said it, but afterwards that you always demanded it: The next was Mr. Herne, he swears the same words again, that you did in the name of the Commons assembled in parliament, and the People of England, exhibit a Charge, &c. These are your own words; if you did exhibit a Charge against the king, to exhibit a Charge of High-Treason the very thing followed; if it were so, there was death; so certainly there cannot be a greater expression of the imagination of a man's heart than that is: It is true, you asked then a question, and that was, Whether that that you concluded was not that you desired to proceed according to justice? It is true, the words of the charge are so; but before you come to conclusion you charge him as a traitor, tyrant, &c. *Communis hostis*; after you had given that charge you demanded justice; those that spit in his face, they demanded justice: every one knew what belonged to that justice: Then Baker, he swears positively that you did exhibit the Charge in this manner; he said this, that you said, you had exhibited a Charge of High-Treason, &c. and that the king sought delays; there is your insisting upon it; he says further that you said these words, That you did desire judgment should be given against him, not so much you, as the blood that had been shed that cried for judgment; truly whether that was a judgment that you intended for acquittal, that must be left to the jury. You asked (because I will repeat it in order as my memory will give me leave) whether there was any other words in the Charge than was in the Proclamation? Mr. Cook, Whether there was any other words, or no, that differed in the proclamation; as it was a great sin and foul fact in the proclamation, so it was as foul in the Charge. Master Masterson swears the same too, he heard you say the second day you had delivered a Charge (the day before) against the king; and that he had delayed his Answer; you desired he might plead Guilty, or Not Guilty; the last day, that you did in the names of the Commons assembled in parliament, and the People of England, demand judgment against the king: and then another swears those words, judgment against the prisoner at the bar, which was the king. Burden swears you examined him as a witness against the king, in what place he was with the king; it seems he was in the king's army; he swears you gave him an oath; (it is testimony fit to be believed) but however, if you did not give the oath, by what you say yourself you may be by, and asked him the question. 'Master Starkey, he tells you, that during the Trial, and before the Sentence, that you, being an old acquaintance of his in Gray's-Inn, and speaking with him, he spake like a friend to you, 'I hear you 'are up to the ears in this business;' and 'whereas you talk of the people, there is a 'thousand for one against it' that you should tell him again, 'You will see strange things, 'but you must wait upon God;' these words

of waiting upon God are words of that nature, people do use them now-a-days when they would do some horrid impiety, which hath been the sin of too many; it is but a canting language, that is the best term I can give it: You told him then 'He must die,' this was before the Sentence; (that is to be observed, Gentlemen of the Jury) you say you did not know of the sentence, you said 'He must die, and monarchy with him.' You must here know that some of those persons that sat upon him said, the king was a gracious and wise king; and as Mr. Cook did say, and they were the best words they spoke, and I think he thinks so in his conscience; but in conclusion 'He must die and monarchy must die with him;' others said, they did not hate king Charles, but they hated monarchy and government; but monarchy was the thing that they would behead. I think I have done with that evidence that was given against you; the indictment itself was read, the Overt-acts was the meeting, propounding, and consulting about it. It appears he was in the chamber about the Charge, that he did propound it, he delivered the Charge, and it appears withal, that he demanded judgment, he desired the king might answer, or that it might be taken *pro confesso*. These are Overt-acts to declare the imagination of his heart. The answer of Mr. Cook I will repeat it as clearly as I can, because nothing shall go to the extenuating of the fact but it shall be spoken. Mr. Cook, in your answer, your defence that you make, you set forth the heads of this Indictment, and you set them forth very truly; the heads are the aggravations of the Indictment, the Indictment was the compassing and imagining the death of the king; it said it was upon these grounds, that you did propound, abet, and consult the death of the king; that you with others did assume power and authority to kill the king, and that thereupon a person unknown in a frock did accordingly kill the king. You say to the first part, if it did not appear that you did advise the death of the king, that you were not guilty: For that, Sir, as I told you before, taking them either complexly or singly, if any of the particulars reached to one of these acts it was enough, but it reaches to all: You required judgment against the king as a traitor, and that with a reason, and certainly death must follow: You say you were appointed to give your advice; you had a Proclamation first for Trial of the king; you had the Order of January 10, whereby you were appointed to give your advice; if it were so, it will be no excuse at all; the proclamation gives you no warrant at all; he that obeys so wicked a proclamation it will not save him; it appears you were privy to this before the proclamation; if you were not at all, when such a thing as this is, such a proclamation and act, and such a manner of trial, as I believe, though you have read very much, you never heard of such a thing in our laws or foreign nations, that you thereupon should take upon you to be of counsel against the king, it aggr-

vates the fact : other men may be impudent and ignorant, but you that were a learned lawyer, your being of counsel doth aggravate the thing. You say, secondly, By law, words will not amount to treason ; for that, I would not have that go for law by no means, though it be not your case ; for you are not indicted for words, but words are treason, and indictments are often for it ; but the difference is this, the Indictment is not for words, but compassing and imagining the death of the king ; words are evidence of the compassing and imagining the king's death ; it is the greatest evidence of the imagination of the heart ; words do not make a treason, that is, if it be by inference or consequence, but reductively ; but if it be immediately, I shall say to a man, Go kill the king, by that which is an absolute, immediate necessary consequence, to say this is no treason, I would not have that go for law ; your case is not for words, but for delivering a Charge, the ground that you speak of ; words may make a heretic, but not a traitor ; it was a witty saying, but you have no sufficient authority for it ; these are words put in writing ; we all know, if a man put his words in writing, if a man speak treasonable words, and put them in writing, they have been several times adjudged treason ; and so in my lord Coke's 3 Institutes, the Case of Williams of the Temple ;\* there was a book of treason in his own study of his making, and he was indicted for it ; words put in writing is an express evidence of the imagination of the heart ; you say it was dictated to you, but when words are written in a Charge, and your name to it (which I had almost forgotten), that is more than words ; the witnesses swear the likeness of your hand ; they do but swear the likeness of your hand ; no man can swear more, unless he was present and saw it ; but you owned the charge, and there your name is ; that besides the two witnesses, there is your own actions to prove it. When two witnesses shall swear it is like your hand, and you own that charge, I must leave it to the jury : you say you did this after command, the words are dictated to you ; the words were *conceptis verbis*, appointed and ordered by the Court, but the pressing was yours ; he stands upon delays, let it be taken *pro confesso*, demanding judgment ; these were your words ; another man may dictate a thing, but you are not forced to speak it ; you urged it, owned it ; you demanded not in the name of the Court, but in the name of all the people of England ; you say further, that your demanding justice is not within the statute ; as I said before, what can be the effect of demanding justice, but that the king should die upon those premises ? You say farther that it was in behoof of the king, as you would urge it ; to do the king a courtesy, in asking the king might have justice ; but you did not name what justice it was ; but you did

him a courtesy ; truly the king was but a little beholden to you for that request ; all the world knows what that demanding of justice was, it was to have the king's head cut off ; you went as far as you could ; it ended with you when you demanded justice ; that is, as far as you could, you cut off the head. St. Paul, when the Witnesses laid down the cloaths at his feet, he said, ' I killed Stephen the ' Martyr.' You say further, that in all tragedies, the accuser or witness, the jury, the judge, and executioner, are the only persons ; and you are none of these ; you are only of counsel ; if justice was not done, what was it to you ? You said you did not assume a power, there was only eloquence required in the counsel ; it hath been truly said, that this is a great aggravation to be of counsel against the king ; you said his majesty was then a prisoner and accused ; counsel cannot be heard against the king ; you undertake to be counsel against the king in his own person, and in the highest crime ; if the counsel at the bar in behalf of his client should speak treason, he went beyond his sphere ; but you did not only speak (but acted) treason ; you said you used not a disrespectful word to the king ; truly, for that you hear what the witnesses have said ; you pressed upon him ; you called it a delay ; you termed him not the king, but the prisoner at the bar, at every word ; you say you did not assume an authority ; it is an assumption of authority, if you countenance or allow of their authority ; you say you do not remember you demanded judgment against the king ; that is fully proved against you ; you yourself asked the question ; whether you did say ' against the king' he did not remember ; but others positively, that you demanded judgment against the king and prisoner at the bar ; you said, that before sentence there was not an intention to put the king to death ; to that Mr. Starkey swears that you expressly said, ' the king must die, and monarchy with him,' and this before the sentence : whereas you say this is but one witness, that there is to be in treason two witnesses ; but that there should be two witnesses to every particular that is an evidence of the fact, that is not law ; if to one particular that is an evidence there be one witness, another to another, here are two witnesses within the meaning of the statute ;\* two witnesses to the indictment, compassing and imagining the death of the king ; being accompanied with other circumstances, this one witness, if you believe him, is as good as twenty witnesses, because other overt-acts are ex-

\* See Williams of Essex's Case, *ante*, vol. 2, p. 1086.

\* See the opinions of the Judges on this point in Lord Stafford's Case, A. D. 1680, *post*. See also the Statutes requiring two witnesses, and the various cases which have occurred upon their construction, cited in East's Pleas of the Crown, ch. 2, s. 63, 64, 65. See, too, Love's Case, A. D. 1651, *ante*, p. 43. And the Sixth of the Points resolved preparatorily to the Trial of these Regicides, *ante*, p. 977.

pressly proved by several witnesses. You say next, for the drawing of the charge, in right reason, it ought to be coduted for the service of the king: first you do acknowledge, and truly very ingenuously, that in the time of peace to bring him to the bar, not being a prisoner, is treason (you say it) according to the law, and that you delivered the charge for the accelerating of the trial; and that it was not done by you traitorously; you say the king was a prisoner before; and you say what hands he was in, in the hands of men of power and violence; it had been your duty to have delayed it, not accelerated it, that there might have been some means of prevention of that bloody act that followed; if you knew that to be treason to make him a prisoner, subjects do not use to make kings prisoners, but death follows. You urge in the next place the Act of Indemnity, and that you are not excepted; for that you have made as much of it as the matter will bear; yet you must consider, first, as a rule in law, that where they are general words, when they come to be explained by the particulars, you shall not include them within the general: mark the very words, they are these: 'Provided that this act, nor any thing therein contained, shall extend to pardon, discharge, or give any other benefits whatsoever unto such and such,' (among whom you are named), 'nor any of them, nor those two persons, or either of them, who being disguised by frocks and vizards, did appear upon the scaffold erected before Whitehall, upon the 30th of Jan. 1619. All which persons' [these are the words]. 'First, It shall not extend to you; then it comes, 'All which persons for their execrable treason in sentencing to death, or signing the instrument for the horrid murder, or being instrumental in taking away the precious life of our late sovereign lord Charles the first of glorious memory, are left to be proceeded against as traitors to his late majesty, according to the laws of England and are out of this present act wholly excepted and foreprized.' First, as I told you before, and as it was very well said by Master Solicitor, admitting the reason had been mistaken, and that you had not been comprehended in the reason, you are excepted out of the body, 'Provided it shall not extend,' &c. Many times laws do make recitals, which in themselves are sometimes false in point of fact; that which is the law is positive words, the other words are for the reason; 'excepting all which,' that is, master Cook, which person is excepted, not for doing of it, but for his execrable crimes in being instrumental. It is clear without that, if it were not so; we say when a sentence is, or such a one, or such a one, the third, 'or' makes all disjunctive: here are three 'ors,' first in sentencing to death, or signing the instrument, then comes this, 'or' being instrumental in taking away the precious life of our late sovereign, &c.' This 'or' doth clearly exclude the other two; 'or instrumental' not only in point of death, but farther, 'being

'either sentencer, signer, or being instrumental in taking away the king's life:' that is being any way instrumental. Truly, whether it be not instrumental to exhibit a charge against him, or complain of his delays; to ask justice against him in the name of the people, to do all this, and desire that the charge might be taken *pro confesso*, if this be not instrumental, I know nothing else but sentencing and signing: some signed the Sentence, some the instrument for death: the next degree of being instrumental, the highest degree of that, is to accuse him, to deliver in the charge against him in the name of the people; do it again and again, be angry at the delays. The next thing is this, that you did not do this *fulso* or *malitiose*, but for your fee; and that though there might be *avaritia*, there was not *malitia* in it; it was done by your profession, you were not magisterial in it; you thought the consequences that did follow, would not follow. If a man does but intend to beat a man, and he die upon it, you know in law it is all one: you must understand there is a malice in the law; if a man beat one in the streets, and kill him, though not maliciously in him, yet it is so in law. That you desire to have the benefit of the king's Declaration; that you did put in your petition proving the same; that you were a prisoner before; that the commons in behalf of themselves and the people of England they craved the benefit of it, which was granted, excepting such as should be by parliament excepted; and that the king should mention a free parliament; for this, it hath been fully answered to you, and clearly, by Mr. Solicitor, that you are not at all concerned in the king's Declaration at Breda. For first, it is nothing in law, it binds in honour; and we have given the same directions yesterday upon the like occasion, that is, that the king's Declaration binds him in honour and in conscience, but it does not bind him in point of law, unless there were a pardon granted by the broad seal; the thing is cleared to you what parliament the king meant by it; they were sitting at that time, had acknowledged their duty and allegiance to their king; they went *ad ultimum potentie* for a free and absolute parliament, whilst the king was absent, though the king was away; yet notwithstanding the king declared whom he meant; he directed one of those Declarations to our Speaker of the House of Commons, and another to the Speaker of our Peers: In this case it was *loquendum ut vulgus*; it was owned by him as having the name of a parliament; it was done with great wisdom and prudence, and so as it could be no otherwise; that they were loyal subjects, acting in the king's absence; he consenting to it; the king owning that authority; so he was obliged in honour no further than his own meaning and words; but there is another clause in the act which excludes all these persons. The next thing is this, you say the statute of 25 Edw. 3, and it is very true, you say if it be any semblable treason, we were not to judge upon that, unless

they were the treasons in the act; and it is most true; now you would urge but this, that this is but a semblable treason; but you are indicted for the compassing and imagining the death of the king: If these acts did not tend to the compassing and imagining the king's death, I know not what does; I am satisfied you are convicted in your conscience. The next thing (for you have said as much as any man can in such a cause, it is pity you have not a better), you say, though it was a tyrannical court, as it is called, but such a court, it was, and there were officers you say, it had *figuram judicii*; that aggravates the act to you, to your profession. There is a difference between a standing court, and that which is but named to be a court; this was but one of a day or two's growth before, and you know by whom; by some that pretended to be only the commons; your knowledge can tell you, that there was never an act made by the commons assembled in parliament alone; and you may find it in my lord Coke, that an act by the Lords and Commons alone was naught, as appeared by the Records; sir James Omond was attainted of treason; the act was a private act, by the king and commons alone; the lords were forgot; when the Judges came to try it, it was void; and another in Henry the 6th's time; you know this was no court at all; you know by a printed authority, that where a settled court, a true court is, if that court meddle with that which is not in their cognizance, it is purely void; the minister that obeys them is punishable; if it be treasonable matter, it is treason; if murder, it is murder: So in the Case of Mar-balsea, and in the Common Pleas, if a man shall begin an appeal of death which is of a criminal nature, and ought to be in the King's Bench, if they proceed in it, it is void; if this court should condemn the party convicted, and he be executed, it is murder in the Executioner; the court had no power over such things. You speak of a court: 1. It was not a court: 2. No court whatsoever could have any power over a king in a coercive way, as to his person. The last thing that you have said for yourself is this, that admitting there was nothing to be construed of an Act or an Order, yet there was a difference; it was an act *de facto*, that you urged rightly upon the statute of 11 Hen. 7, which was depied to some, God forbid it should be denied you; if a man serve the king in the war, he shall not be punished, let the fact be what it will. King Henry the 7th took care for him that was king *de facto*, that his subjects might be encouraged to follow him, to preserve him, whatever the event of the king was: Mr. Cook, you say, to have the equity of that act, that here was an authority *de facto*; these persons had gotten the supreme power, and therefore what you did under them you do desire the equity of that act; for that clearly the intent and meaning of that act is against you; it was to preserve the king *de facto*, how much more to preserve the king *de jure*; he was owned by these men,

and you, as king; you charged him as king, and he was sentenced as king. That that king Henry the 7th did was to take care of the king *de facto* against the king *de jure*; it was for a king and kingly government, it was not for an antimonarchical government; you proceeded against your own king, and as your king, called him in your Charge, "Charles Stuart King of England." I think there is no colour you should have any benefit of the letter, or of the equity of the act. They had not all the authority at that time, they were a few of the people that did it, they had some part of the army with them; the lords were not dissolved then, when they had adjourned some time, they did sit afterwards, so that all the particulars you alledge are against you. The last thing was this, You say, that it having pleased God to restore the king, judgment should be given for example for terror to others that this could not be drawn into example again; why? Because by the blessing of God peace was restored; no probability that if your life was spared, that it would be drawn again into example; this is the weakest thing you have urged; you must know the reason: There are two things, there is the punishment, and example; punishment goes to the prisoner, but example to the documents of all others; God knows what such things may be in after-ages, if there should be impunity for them; it would rather make men impudent and confident afterwards. If you have any more to say I will hear you, if not, I must conclude to the Jury: You hear the Evidence is clear for compassing and imagining the death of the king; you have heard what he has said, and what he hath done; he was within, and examined Witnesses against the King, that he was by at the drawing of the Charge where it was drawn; you hear he exhibited this Charge in the name of the commons assembled in parliament, and the good people of England, and what this Charge is; it is High Treason, and other high misdemeanors; you find that he does complain of delays does again and again speak of this Charge, desire it may be taken *pro confesso*; in the close of all, it was not so much he as innocent blood that demanded justice: this was more than was dictated to him. You have heard the witnesses; he was persuaded to forbear; acknowledged the king to be a gracious and wise king; the oaths alledged against him, and you have heard his excuse; I have nothing more to say; I shall be very willing to hear you further; I have not absolutely directed the Jury.

Cook. I do humbly acknowledge your patience in hearing me, and that your lordships have truly and justly stated both proofs and my answer. If your lordships are pleased to lay aside these acts, or orders, or authority, whereby I did at that time truly conscientiously act, and did think that it would bear me out; if you lay aside that, and look upon it as so many men got together, without authority, and as well those that were instrumental,

though not sentencers or signers, and that clause in the act, I confess I humbly make hold to say, I have not received satisfaction in my judgment; those very words of 'not so much I as the innocent blood cries for justice,' were dictated to me; there was nothing at all left to me, because his majesty did not plead; there was no trial; that which I did was according to the best, though it may be according to the weakest part of my judgment: I have no new matter.

*L. C. Baron.* You have said no new matter, unless it be worse than before, for now you warrant that authority.

*Cook.* Do not mistake me, my lord, I mean so far as to excuse me in the point of High-Treason.

*L. C. Baron.* We delivered our opinions as to that formerly; we were of opinion, that the acting by colour of that pretended authority was so far from any extenuation, that it was an aggravation of the thing: the meeting by that authority was treason, and in them that acted under them, and approving of it; the making of that traitorous pretended Act, making the Proclamation, sitting upon it, they were all so many treasons; that was the reason why that was urged against you, assuming upon you the power, that was, you approving of their power by acting under them, so that there is nothing more to be said.

Gentlemen of the Jury, You have heard the Indictment was for compassing and imagining the death of the king; you have heard the several Overt-Acts repeated, and whether these are guilty of treason to deliver in a Charge against the king, such a one as that was in these words, as against a Traitor, Tyrant, Murderer, and implacable Enemy to the Commonwealth; in these very words to desire Judgment against the prisoner (then the king) at the bar, angry at delays, to desire that the Charge might be taken *pro confesso*, to have it expressly, again and again to demand Judgment; if these be not Overt-Acts of compassing and imagining the death of the king, and that which hath been said by the witnesses, it must be left to you: I think you need not go from the bar.

Jury went together.

Silence is commanded.

*Clerk.* Are you agreed in your verdict?

*Jury.* Ycs.

*Clerk.* Who shall speak for you?

*Jury.* The foreman.

*Clerk.* John Cook, Hold up thy hand. Look upon the prisoner at the bar. How say you, is he guilty of the treason in manner and form as he stands Indicted? Or Not Guilty?

*Fore-man.* Guilty.

*Clerk.* Look to him, Keeper.

*Clerk.* What goods and chattels?

*Jury.* None that we know of.\*

---

\* See an account of his Behaviour and Execution, *post*.

## TRIAL OF HUGH PETERS.\*

October 13, at the same bar.

*Clerk of the Crown.* Set Hugh Peters to the bar: Which was done accordingly.

\* Peters, whom Hume calls "the mad chaplain of Cromwell," seems to have been a man of indefatigable zeal, activity, and restlessness. Besides the accounts of his preachings, we read in Whitelocke not only of his sending the first advices of important events, but also of his occasionally himself bringing such intelligence to the Parliament. We find him also sent to treat with the king's adherents, and conferring with the king (Jan. 20th 1648-9) just before his Trial. After the king's death, we find his arrival at Dublin recorded, on which occasion it is mentioned, that at the beginning of the troubles in Ireland, he had a brigade against the Rebels, and came off with honour and victory, and the like was now expected from him. And, accordingly, ten days afterwards the following dispatch is received from him:

"Sir; The truth is, Drogheda is taken, 3,552 of the enemy slain, and 6 of ours. Col. Castles and C. Symonds of note. Ashton the governor killed, none spared, we have all Trym and Dundalk, and are marching to Kilkenny. I came now from giving thanks in the great Church. We have all our army well landed.

I am, Yours,

Dublin Sept. 15th, [1649.] HUGH PETERS."

In March following, we find him at Milford Haven; "the country whereabout did unanimously take the Engagement: Mr. Peters opening the matter to them and much encouraging them to take it." It is not at all surprising that this man should be rewarded by his masters for "his unwearied services." Whitelocke's Memor. 157. Neither is it matter of surprise, on the other hand, that a man who so boldly meddled with every thing within his reach, should occasionally handle what he was not competent to manage. Whitelocke, after mentioning the Committee for Reformation of the Law, says, he "was often advised with by some of this Committee, and none of them was more active in this business than Mr. Hugh Peters the minister, who understood little of the law, but was very opinionative and would frequently mention some proceedings of law in Holland, wherein he was altogether mistaken." (Memorials, p. 497, Jan. 31st 1650.)

"The charge against Mr. Hugh Peters was, for compassing and imagining the death of the king, by conspiring with Oliver Cromwell at several times and places, and procuring the soldiers to demand justice; by preaching divers sermons, to persuade the soldiery to take off the king; comparing him to Barabbas; and applying part of a psalm where it is said, 'They shall bind their kings in chains,' &c. to the proceedings against him; assuring them, that if they would look into their Bibles, they should find there, 'That whoever sheddeth man's



*Clerk.* Hugh Peters, Hold up thy hand; thou standest indicted, &c. If you will challenge any of the Jury, you must challenge them when they come to the book, before they are sworn.

*L. C. Baron.* Mr. Peters, you may challenge to the number of 85 peremptorily, but beyond that you cannot, without good cause shewn; and you may have pen, ink, and paper.

*Peters.* My lord, I shall challenge none.

'blood, by man shall his blood be shed;' and that neither the king nor any other person are excepted from this general rule. He was also accused of saying, that the Levites, Lords and Lawyers, must be taken away, in order to establish a Commonwealth; that the king was a tyrant, and that the office itself was chargeable, useless, and dangerous. These, with other things of like nature, being sworn against him, Mr. Peters said in his defence, That the war began before he came into England; that, since his arrival, he had endeavoured to promote sound religion, the reformation of learning and the law, and employment of the poor; that, for the better effecting these things, he had espoused the interests of the parliament, in which he had acted without malice, avarice, or ambition; and that, whatever prejudices or passions might possess the minds of men, yet there was a God who knew these things to be true. It was not expected that any thing he could say should save him from the revenge of the court; and therefore he was without hesitation brought in guilty. This person had been a minister in England for many years, till he was forced to leave his native country, by the persecution set on foot, in the time of Abp. Laud, against all those who refused to comply with the innovations and superstitious which were then introduced into the public worship. He went first into Holland, and from thence to New-England; where, after some stay, being informed that the parliament had relieved the people in some measure from the abuses in church and state, and designed to perfect that work, he returned to England; and in all places, and on all occasions, encouraged the people to appear vigorously for them. Having passed some time in England, he was made chaplain to a brigade that was sent against the Irish rebels; and observing the condition of the plundered Protestants in that country to deserve compassion, he went into Holland, and improved the interest he had there with so good success, that he procured about 30,000*l.* to be sent from thence into Ireland for their relief. He was a diligent and earnest solicitor for the distressed Protestants of the vallies of Piedmont, who had been most inhumanly persecuted, and reduced to the utmost extremities, by the tyranny of the Duke of Savoy; and in gratitude to the Hollanders for the sanctuary he had found among them in the time of his distress, he was not a little serviceable to them in composing their differences with England in the time of Cromwel.

3 Ludlow 60.

Jury sworn 12, Sir Jer. Which, James Hally, Christ. Abdy, Nich. Rainton, Rich. Cheney, Jo. Smith, Rich. Abol, G. Terry, Char. Pickern, Jo. Nichol, Fran. Dorrington, Anthony Hall.

*Clerk.* Hugh Peters, Hold up thy hand. Look on the prisoner, you that are sworn, &c.

*Sir Edward Turner* to the Jury. You have often heard repeated to you, that the substantial part of the Charge is the compassing and imagining the death of the king, and all the rest will be but evidence to prove that imagination against the prisoner at the bar, whom we will prove to be a principal actor in this sad tragedy, and next to him whom God hath taken away, and reserved to his own judgment; and we shall endeavour to prove, that he was a chief conspirator with Cromwell at several times, and in several places; and that it was designed by them: We shall prove that he was the principal person to procure the soldiery to cry out, Justice, Justice, or assist or desire those for the taking away the life of the king. He did make use of his profession, wherein he should have been the minister of peace, to make himself a trumpeter of war, of treason and sedition, in the kingdom: He preached many sermons to the soldiery, in direct terms for taking away the king, comparing the king to Barabbas: He was instrumental when the Proclamation for the High Court of Justice (as they called it) was proclaimed, directing where it should be proclaimed, and in what place. When the king was brought upon the stage, that mock-work, he was the person that stirred up the soldiery below to cry for Justice; we shall shew you as he preached at several times upon several occasions, still he was in the pulpit to promote this business; the next day after he was brought to trial he commends it; you shall hear all out of the mouth of the prisoner, therefore I say no more; call the witnesses.

*Dr. William Young* sworn.

*Counsel.* Tell my lords and jury what the prisoner at the bar has declared to you concerning the contrivance of bringing the king to trial.

*Dr. Young.* My lords, and gentlemen of the jury, it was near about (and that the prisoner may remember) the month of July, 1648, since we came first acquainted, when he went over to Ireland; it was about the siege of Pembroke Castle; but afterwards in the year 1649, we renewed our acquaintance; he went over into Ireland with that usurper, the late Protector, as he was called, after the town of Wexford was taken; coming over he fell sick of the flux, and said he received it by infection, praying over Captain Horton: Coming into Milford, that captain sends a summons to me to come on board, that was to fetch this prisoner at the bar, who was sick. I found him there grovelling upon the deck, and sick he was indeed; with much difficulty we got him on shore; within a very few days, to the best of my remembrance five days, I perfected his cure: we became very familiar; I observed in him that he had

some secret thoughts that I could not well discover, neither well understand; whereupon I thought it might tend to my security that I should so much sympathize with him, to get within him to know his intentions. After some weeks, (for he continued with me ten weeks, or near thereabout, some few days rather over than under,) we grew so familiar, that at last I found he began to enlarge his heart to me. Many times I should hear him rail most insufferably against the blood royal, not only against our martyred king, but against his offspring; still as we continued our acquaintance, he became more and more open to me; so we would sit up discoursing till about twelve or one of the clock at night very often, about these unhappy wars late in England. At last, my lord, I found him that he began to tell me how he came into England, and upon what account he came out of New-England. I shall desire that in regard his discourses were various, that I may deliver them orderly; they were delivered to me within the compass of ten weeks; but the days and weeks I cannot remember. First, he told me, (discoursing of New-England and the Clergy there, and much of the Clergy here in England, and of the business here of Reformation,) he told me, that for the driving on of this interest of this Reformation, he was employed out of New-England for the stirring up of this war, and driving of it on; this I shall, my lord, speak to in the first place, and that upon the oath I have taken: And, secondly, he was pleased at another time to acquaint me, and that by way of compliment, complaining then against the parliament, saying, that some time after he was come into England he was sent over into Ireland by the parliament to receive further instructions to drive on the design, to extirpate monarchy; saith he, I did spend a great deal of my own money, yet never had that satisfaction from them which they promised me; that was, they promised 2 or 3,000*l.* for my journey, and yet they have given me no more but only a small pittance of land out of my lord of Worcester's estate in Worcestershire. I have seen his letters directed to his kinsman here in London; as I take it his name was Parker, advising him for the settling of his land, and selling it. Thirdly, my lord, I have observed, that by way of vilification of the monarchical government, I have found him jocundly scolding at it, and would ordinarily quibble in this manner, saying, 'this Commonwealth will never be at peace 'till 150 be put down.' I asked him what this 150 was, he told me three *l's*, and afterwards interpreted the meaning to be the Lords, the Levites, and the Lawyers: with that, said I, we shall be like Switzers, Tinkers, and Traitors. Now, my lord, we are come to the last particular; we discoursing thus frequently, and whilst he was then a colonel, and had a commission under that usurper Oliver, and brought over his commission for raising of soldiers to foment that war in Ireland; that it was so I appeal to the dictates of his own conscience,

and whether he did not press me very importunately to accept of a commission of major, or a captain; he did issue forth two commissions under his own hand, one of them to bring over from Devonshire two foot companies unto Cork. My lord, because we were militarily affected, amongst the discourses of our unhappy wars, I know not how it came from him, it being near eleven years since, and I have had many sufferings incumbent on me, so that I may fail in some particulars, but in general thus it was: We were discoursing concerning our martyred king, as then we called him, and of his imprisonment in Holmeby-House, which I wondered at; thus we discoursed: he told me the story how they had used him at Holmeby; and at last came up to this, when he was taken away from Holmeby-House,\* the parliament had then a design to have secured Oliver Cromwell, and myself, being then in London; saith he, we having intelligence of it, escaped out of London, and rode hither for it, and as we rode to Ware we made a halt, and advised how we should settle this kingdom in peace, and dispose of the king; the result was this, They should bring him to justice, try him for his life, and cut off his head: whether this was the expression of Cromwell I cannot tell; but to the utmost of my remembrance, and I am mistaken if it was not the advice of Mr. Peters to Cromwell; and I believe it, because his former relations of his instructions out of Ireland did tend to that effect.

*Mr. Sol. Gen.* I will ask you this question; we will not press you particularly upon your memory, whether Cromwell or Peters said the words? Do you remember he confessed to you they were agreed upon that matter?

*Young.* They did consult and agree upon it.

*Peter.* My lord, I desire to speak a word, [his voice being low, he was brought to the second bar]. I am the bolder to speak to your lordships at this time a word, and it is high time to satisfy my conscience; if these things were true, there is enough said to destroy me; I desire leave to tell you what offence I take at the witness, thus, my lord. This gentleman I do know—

*Council.* What say you to him?

*Peters.* That which I have to say is this, that

\* It appears from Whitelock, that shortly after king Charles the First was removed by Joyce from Holmeby to Newmarket, 'Mr. Peters went to the king to Newmarket, and had much discourse with him.' Rushworth says, 'Mr. Peters was at Newmarket, and had much discourse with his majesty. His majesty told Mr. Peters, that he had often heard talk of him, but did not believe he had that solidity in him he found by his discourse; that he would have further conference with him another time. Mr. Peters moved his majesty to hear him preach, but his majesty refused.' Whitelocke's Mem. 257. 6 Rushw. Coll. 578.

in his story he hath told that which is not true; but I will not find fault with him, because he was my host, I will not reflect and recriminate: I shall give your lordships in simplicity as much satisfaction myself as any witness; this I say to the man that speaks, and this is certain, I did spend some time at this gentleman's house, he is called there Dr. Young; and my trouble at this discourse is this, I do not know, my lord, that I found a more violent man for the parliament than himself; so far he undertook to be a spy on one side; this I find to be so, he will not deny it; he was very fierce in that way; I think words of such a man ought to be little attended to. The second is this, this gentleman is not a competent witness, and that upon a twofold ground. First, because I know he is under a very great temptation and trouble in this thing, and it is upon this account he was put out of his living in the country, and here he came to me to help him in again, and was very highly offended because I did not do it. Secondly, it is not that I would invalidate his witness, but give me leave to tell you; it is his way to snap and catch at every man, which is the complaint of the people in his own country. I know that same which is spoken is false; I speak it in the presence of God, I profess, I never had any near converse with Oliver Cromwell about such things; I speak this to the jury, that they would have a care of the witness; I was in sickness then; those that have known me do know likewise that I have much weakness in my head when I am sick, and to take words that are spoken in a sick condition, he ought not to do it; for the words themselves I do here profess against them, for the generality of them; and that he hath been freer in my judgment in any communication in this way than I have been; it is marvellous, here I profess the things untruths, I call God and angels to witness they are not true. I will give you an account of my whole condition by and by, if I may be heard.

*Court.* You shall be heard at large; that which you have been heard now is concerning the competency or incompetency of the witness: the incompetency against him is this, that when you came thither none more violent for the parliament than himself, and that he was a great spy, and you say it was usual with him to take such courses: these are but words; if you have any witnesses we will hear them; the man may be traduced and slandered, and so all witnesses may be taken away.—*Mr. Peters,* if you take this course, God knows when this business will end; if you have a mind, take pen, ink, and paper, and take notes of the witnesses, and make exceptions to them one after another; but interrupting one, and so another, we shall never have done.

*Young.* I do recollect myself of some other conferences between us; as to my being malicious, I know he never did me any wrong, and therefore I cannot be malicious; and as for my reputation, having resided two years in London, I can have certificates both from my

country, and some of this city, to vindicate me in that particular: But, my lord, that which I would inform your lordship is this, he told me he took duke Hamilton a prisoner himself in his own chamber, seized on his goods, and took his George and blue ribbon off his shoulder, and the George he shewed me.

*Wybert Gunter* sworn.

*Counsel.* Mr. Gunter, what can you say concerning a meeting and consultation at the Star in Coleman-street?

*Gunter.* My lord, I was a servant at the Star in Coleman-street, with one Mr. Hildesley; that house was a house where Oliver Cromwell and several of that party did use to meet in consultation; they had several meetings; I do remember very well one among the rest, in particular that Mr. Peters was there; he came in the afternoon about four o'clock, and was there till ten or eleven at night; I being but a drawer could not hear much of their discourse; but the subject was tending towards the king, after he was a prisoner, for they called him by the name of Charles Stuart; I heard not much of the discourse; they were writing, but what I know not; but I guessed it to be something drawn up against the king; I perceived that Mr. Peters was privy to it, and pleasant in the company.

*Court.* How old were you at that time?

*Gunter.* I am now thirty years the last Bartholomew-Day, and this was in 1648.

*Court.* How long before the king was put to death?

*Gunter.* A good while; it was suddenly, as I remember, three days before Oliver Cromwell went out of town.

*Peters.* I was never there but once with Mr. Nathaniel Pines.

*Counsel.* Was Cromwell there?

*Gunter.* Yes.

*Counsel.* Was Mr. Peters there any oftener than once?

*Gunter.* I know not, but once I am certain of it; this is the gentleman; for then he wore great sword.

*Peters.* I never wore a great sword in my life.

*Mr. Starkey* sworn.

*Starkey.* My lords, in the month of December, before the king died, in the beginning of that month, and so towards the 12th of January following, the head-quarters of the army were at Windsor, and Mr. Ireton, that is dead, who was a general officer of the army) was quartered in my father's house there, and by reason of his long residence there, being about two months, I knew him very well. My lords, his gentleman Mr. Peters, he likewise quartered in another place in that town, and Cromwell himself was quartered at one Mr. Baker's not far low in the town; so that in truth my father's house being near the Castle, and therefore being in it a large room, and in respect that Mr. Ireton was quartered there, usually the

Council of War sat there. My lords, I was then in the house constantly: Besides this Council of War, which did commonly sit there, I did observe that Cromwell, Ireton, and this gentleman Mr. Peters, and one col. Rich, and a fifth person, whose name I have forgot, did usually meet and consult together, and would sit up till two or three o'clock in the morning very privately together: this was their usual course when their Council of War sat; Mr. Ireton came in to supper, but went out again; there were guards upon them: After this time it happened that I was often in Mr. Ireton's company, where Mr. Peters coming to him, was very often at meals there, but especially at nights. Mr. Ireton being civil in carriage, would usually entertain discourses with Mr. Peters, likewise would favour me sometimes with discourse; and in that discourse I did many times take occasion to assert the laws in point of the king; and discoursing about the king as being a capital instrument in the late inconveniences, as they called it, in the times of the war, Mr. Ireton would discourse this ordinarily; I was bold to tell them that the person of the king was *solutus legibus*; this gentleman the prisoner at the bar, told me it was an unequal law. I did observe Mr. Peters did bend his discourse, not by way of argument only, but in point of resolution of judgment, fully against the person and government of the king. I remember some of his expressions were these, That he was a tyrant, that he was a fool, that he was not fit to be a king, or bear that office; I have heard him say, that for the office itself, (in those very words which shortly after came into print,) that it was a dangerous, chargeable, and useless office. My lords, the constant discourse of this gentleman at that time was such as he did believe would never be called into question, so it was not a thing that a man was necessitated to observe by an accident, but it was their whole discourse. I will put you in mind of a particular passage: When the news came to Windsor that the king was in prison at the Isle of Wight, my father, (whose house that was) was very much troubled at it; and being an ancient man, was not able to controul his passions with reason, told my mother that they (meaning Mr. Ireton, &c.) should have no entertainment there, and took the key of the cellar and put it in his pocket; his passions being lessened, Mr. Ireton, his wife, and another officer being at supper, and afterwards my father said grace, and, as he usually did, though they were there, he said that usual and honest expression, praying for the king in these usual words, 'God save the king, prince, and realm;' sometimes they did laugh at it, but never did reflect upon him; but this night he made this expression, 'God save the king's most excellent majesty, and preserve him out of the hands of all his enemies.' Peters, who was then at the table, turns about to him, and said, 'Old gentleman, your idol will not stand long; I do conceive he was not it of the king. For a

matter of two months of the constant residence and being of the army there, I did observe that in the General Council there, and in this private cabal, (after the business was broke out, and when the king was taken prisoner, and carried to Windsor), Mr. Peters was the constant man; and when the business broke out, I looked upon it in reason that Cromwell, Ireton, and this gentleman at the bar, and Rich, and that other gentleman, whose name I have forgot, that they were the persons that did the business. My lords, Mr. Peters he continued at Windsor: I remember very well that after the body of the army, the general, and the officers of the army, were gone to London, he continued in Windsor: I remember a passage of one Bacon, who was a secretary; Mr. Peters being in discourse of the king, Mrs Bacon took great distaste at Mr. Peters for some affront put upon the king; Mr. Peters falls upon him, and rails at him, and was ready to beat him; we understood it so, because he did tell him of his affronting the king.

*Council.* Mr. Peters, if you have any thing to ask this witness, you may.

*Peters.* I have many things to ask him. Did I ever see there?

*Starkey.* No.

*Peters.* Did you see me there at 3 o'clock in the morning?

*Starkey.* I have seen you go up at ten o'clock at night to Mr. Ireton's chamber, and sometimes I understood you did not go away till four o'clock in the morning; I went to bed it is true, but I understood it so.

*Thomas Walkely* sworn.

*Council.* Give your testimony what consultation you have had with the prisoner at the bar.

*Walkely.* I came out of Essex in at Aldgate; just as I came in a Proclamation was read for trial of his late majesty; I went down the next day to the Painted Chamber at Westminster, where I saw Oliver Cromwell, John Goodwin, and Peters, and others; John Goodwin sat in the middle of the table, and he made a long speech or prayer, I know not whether, but Mr. Peters stood there: After John Goodwin had done his prayer, it was desired that strangers might avoid the room; then came up Cook, and Dorislaus, and Humphries, and Ask, and Dendy, and several others, and stood by Bradshaw at the upper end of the table; but Cromwell stood up and told them it was not necessary that the people should go out; but that was over-ruled; and so I went out and staid their rising, and saw this gentleman Mr. Peters come out with them. After that, when the king was brought to town a prisoner, the lord Carew, a very honourable person, meeting with me, saith he, 'Walkely, if you will ever see your old master, go now, or else it may be you will never see him. Where is he, my lord, said I? Saith he, he is coming on this side Brainford. I went to the further end of St. James's Corner, and there I met some of the

army coming, and then I saw his majesty in his coach with six horses, and Peters, like bishop almoner, riding before the king triumphing\*; then, after that, in St. James's Park, I saw Peters marshalling the soldiers, and I was forced to go about. My lord, this is all I can say concerning that. I remember one thing further of him; I heard him in Westminster-Hall say, within a year or two after the army was raised, 'If we can keep up our army but seven\* years longer, we need not care for the king and all his posterity.'

\* The following extract, inserted in Seward's "Anecdotes of Distinguished Persons," is made from a very curious little book, called, "England's Shame, or the Unmasking of a Politic Atheist, being a full and faithful relation of the life and death of that Grand Impostor, Hugh Peters, by William Young, M. D. [probably the Witness,] London, 1663, 12mo. Dedicated to her most excellent majesty Henrietta Maria, the mother queen of England, Scotland, France, and Ireland."

"The soldiers were secretly admonished, by letters from Hugh Peters, to exercise the admired patience of king Charles, by upbraiding him to his face; and so it was; for having gotten him on board their boat to transport him to Westminster-Hall, they would not afford him a cushion to sit upon, nay, scarcely the company of his spaniel, but scoffed at him most vilely; as if to blaspheme the King were not to blaspheme God, who had established him to be his vicergerent, our supreme moderator, and a faithful Custos Duorum Tabularum Legum, Keeper of both Tables of the Law."

"The King being safely arrived at Whitehall, (that they might the easier reach the crown), they do with pious pretences, seconded with fear of declining, hoodwink their general Fairfax, to condescend to this bloody sacrifice. Whereas Oliver Cromwell and Ireton would appear only to be his admirers, and spectators of the regicide, by standing in a window at Whitehall, within view of the scaffold and the people; whilst Peters, fearing a tumult, dissembles himself sick at St. James's: conceiting that he might thereby plead Not Guilty, though no man was more forward than he to encourage col. Axtel in this action, and to animate his regiment to cry for Justice against the Traitor, for so they called the King."

"The resolve passed," adds Dr. Young, "that the King must be conveyed from Windsor Castle to Hampton Court, Harrison rides with him, and upbraids him to his face. Peters riding before him out of the castle, cries, We'll whisk him, we'll whisk him, now we have him. A pattern of loyalty, one formerly a captain for the King's interest, seizing Peters' bridle, says, Good Mr. Peters, what will you do with the King? I hope that you will do his person no harm. That Peters might be Peters, he replies, He shall die the death of a Traitor, were there never a man in England but he."

*Mr. Proctor sworn.*

*Proct.* I having occasion to go from London to Windsor the day that the king was brought from thence a prisoner, a little on this side Brainford I saw great troops of horse; I did conceive what the cause was, having heard the king was to be brought up to his trial; after I had passed some number of horses, at last I espied the prisoner at the bar immediately before the king's coach, singly riding before the coach-horses, and the king sitting alone in the coach. My lord, I did put off my hat, and he was graciously pleased to put off his hat; the troopers seeing this, they threw me into the ditch, horse and all, where I staid till they passed by, and was glad I escaped so.

*Hardwick sworn.*

*Counsel.* When the proclamation was read in Westminster-hall for trial of the king, did you see Mr. Peters there?

*Hardwick.* I was in the hall when that ugly proclamation was proclaimed, where I saw Dendy, King, and that gentleman, the prisoner at the bar, in the hall; after the proclamation was proclaimed, the prisoner at the bar came out into the Palace-Yard, and told them, 'Gentlemen,' saith he. (a great many officers and soldiers being there) 'all this is worth nothing, unless you proclaim it in Cheapside, and at the Old Exchange.'

*Counsel.* Explain yourself, what proclamation do you mean?

*Hardwick.* The proclamation for the High-Court of Justice.

*Holland Simpson sworn.*

*Counsel.* What do you know concerning the prisoner at the bar?

*Simpson.* I do know Mr. Peters very well, I have known him these 11 or 12 years; when the High-Court of Justice was sitting, both in the Court and Painted Chamber, I saw this gentleman in consultation there, and at several other places, at sir Will. Brereton's and other where.

*Counsel.* Did you see him at the trial?

*Simpson.* I saw him, but not as a judge. There was one day in the hall colonel Stubbards, who was adjutant-general, (he was a very busy man,) and colonel Axtel; Mr. Peters going down the stairs, comes to him, and bids Stubbards to command the soldiers to cry out 'justice, justice, against the traitor at the bar.'

*Counsel.* Who did he mean?

*Simpson.* The king was at the bar at the same time; whereupon, my lord, the soldiers did cry out upon the same; and as the king was taken away to sir Robert Cotton's, some of them spit in the king's face, but he took his handkerchief, wiped it off, and smiled.

The Captain forced to loose his hold of the reins, by a blow given him over his hand with Peter's staff, this trumpeter of sorrow rides on singing his sad note, We'll whisk him, we'll whisk him, I warrant you, now we have him!

*Peters.* I do not know this gentleman, did he ever see me?

*Simpson.* Yes, divers times in the Painted-Chamber, at sir William Brereton's at the deanery, in consultation with Bradshaw, and you were admitted, and no man else, as I know, unless sir Will. Brereton, who came along with you.

*Thomas Richardson* sworn.

*Richardson.* My lords, the first day that this Court of Justice (as they called it) did adjourn, I went up into the Court, and I saw the prisoner at the bar with some more standing in the Court, and I came and stood close by him, and some with him, whom I did not know; I heard him commend Bradshaw, the carriage of him in the trial of the king, and another Cook's carriage; to be short, Mr. Peters holding up his hands, said, 'This is a most glorious beginning of the work.'

*Sir Jeremy Whichcot* sworn.

*Whichcot.* My lords, I have by accident, not by choice, been several times in Mr. Peters's company; truly I have heard him speak very scurrilously of the king; amongst the rest he was making some kind of narration of Cromwell making an escape, and that he was intended to be surprized; that if he had not presently gone away he had been clapt up in the Tower, and declared a traitor; he said there was a meeting of the officers of the army, where he used this expression, 'And there we did resolve to set aside the king.' My lord, after this (it was at another time) he was speaking of that which they called the High Court of Justice, and I do very well remember this was his expression of it, 'I cannot but look upon this Court with a great reverence, for it doth resemble in some measure the trial that shall be at the end of the world by the Saints.' This is all that I perfectly remember; it was a great while ago; I cannot speak more punctually; I have seldom heard him speak of the king, but of the tyrant. I remember one time he was saying he would have preached before the king, but, said he, 'the poor wretch would not hear me.'

*Richard Nunnally* sworn.

*Counsel.* Was Peters upon the Scaffold at the time of execution, or before?

*Nun.* On that unhappy day, 30th of Jan. 1649, this Hugh Peters came an hour before the king came to Whitehall; I came with a warrant of 40 or 50,000*l.* to Oliver Cromwell, being door-keeper to the Committee of the Army; Nunnally, says Oliver Cromwell, will you go to Whitehall? Surely you will see the beheading of the king; and he let me into Whitehall; coming into the boarded gallery I met Hugh Peters, and he was in the gallery; and then I got with Hugh Peters into the Banqueting-House; being there, Hugh Peters met one Trench of Houndsditch, that was a joiner; meeting him; he speaks to him, and whispers

in his ear, and told him somewhat, I do not know what it was; but Trench presently went and knocked four staples upon the scaffold; I meeting Trench again, What art thou doing, said I? What, will you turn hangman? Says he, This day will be a happy day. Said I, Pray God send it be not a bloody day; upon that Hugh Peters went upon the scaffold just an hour before the king came, and then he went off again. I watched at the window when the king's head was cut off, and afterwards I saw the vizards going into a chamber there; about an hour afterwards (I staying there at the door) there comes Hugh Peters in his black cloak and broad hat out of that chamber (as I take it) with the hangman; I am sure I did see him go along with the hangman to take water; this is all I can remember, it being many years since.

*Peters.* I humbly beg I may be heard in this case; I have here a witness, and I desire he may be examined; it is noised I was upon the scaffold, I here call God to witness I was not out of my chamber that day; I was sick that day; I speak in the presence of the Lord.

*Court.* If your witness will stay he shall be heard; there are more witnesses to the same thing, and so he may speak to all together.

*Dr. Mortimer* sworn.

*Mortimer.* Me lar, me ha seid de king, &c.

*Court.* We cannot understand a word.

*Counsel.* He is a Frenchman, my lord.

*Court.* Pray let there be an interpreter.

[One Mr. Young was sworn to interpret truly his evidence.] But it being afterwards found difficult and troublesome, the counsel waved his evidence, and prayed another witness might be called.]

*Mortimer.* Me Lar, me can speak English—

*Counsel.* No, no, pray sit down, we will examine other witnesses. Call Stephen Clough.

*Stephen Clough* sworn.

*Counsel.* What do you know of Hugh Peters?

*Clough.* My lords and gentlemen of the jury, in 1648 I heard of a meeting of the Council of officers at Westminster, I think in the Painted-Chamber, and I being willing (my lord) to hear what their consultations were, I went thither, and was there as one of them, (but I was not one,) amongst the rest Hugh Peters was one; when the room was pretty full the door was shut. Mr. Peters desired to call for a blessing upon their business, in his prayer he uttered these words, 'O Lord, (said he) what a mercy is it to see this great city fall down before us! And what a stir is there to bring this great man to trial, without whose blood he will turn us all into blood if he reign again!'

*Peters.* What day was this?

*Clough.* It was about three weeks or a month before the king died.

*Peters.* Where was this?

*Clough.* In the Painted Chamber.

*Peters.* You have been very bold.

*Clough.* I speak upon my oath.

*Peters.* How long was this ago?

*Clough.* In 1648.

*Peters.* How many years since is that?

*Clough.* You know yourself sure how many years since 1648.

*Peters.* How long before the king died, do you say?

*Clough.* About three weeks or a month before the king was murdered.

*Counsel.* We shall call a witness to prove, that in December 1648, there was a solemn fast appointed to seek God in what they were about, and Mr. Peters was appointed to preach before them.

• Mr. Beaver sworn.

*Beaver.* My lord, and you gentlemen of the jury, upon a day that was appointed for a Fast for those that sat then as a parliament, I went to Westminster to find out some company to dine with me, and having walked about an hour in Westminster-hall, and finding none of my friends to dine with me, I went to that place called Heaven, and dined there; after I had dined I passed through St. Margaret's Church-yard to go home again, (I lay in the Strand,) I perceived all the church-yard full of muskets and pikes upon the ground, and asked some soldiers that were there what was the business. They told me they were guarding the parliament that were keeping a fast at St. Margaret's; who preaches? Said I. They told me Mr. Peters is just now gone up into the pulpit; said I, I must needs have the curiosity to hear that man, having heard many stories of the manner of his preaching; (God knows I did not do it out of any manner of devotion;) I crouded near the pulpit, and came near the Speaker's pew; and I saw a great many members there, whom I knew well: I could not guess what his text might be, but hearing him talk much of Barabbas and our Saviour, and insisting altogether upon that, I guessed his text was that passage wherein the Jews did desire the release of Barabbas and crucifying of Christ; and so it proved; the first thing I heard him say was, 'It was a very sad thing that this should be a question amongst us, as among the old Jews, whether our Saviour Jesus Christ must be crucified, or that Barabbas should be released, the oppressor of the people: O Jesus,' saith he, 'Where are we, that that should be a question amongst us?' Says he, 'And because that you should think, my lords and gentlemen, that it is a question, I tell you it is a question; I have been in the city, which may very well be compared to Hierusalem in this conjuncture of time, and I profess those foolish citizens for a little trading and profit they will have Christ' (pointing to the Redcoats on the pulpit-stairs) 'crucified, and the great Barabbas at Windsor released.' Says he, 'but I do not much heed what the rabble say: I hope,' says he, 'that my brethren of the clergy will be wiser, the lips of the priests do use to preserve know-

'ledge; I have been with them too in the assembly, and having seen and heard what they said, I perceive they are for crucifying of Christ, and releasing of Barabbas; O Jesus, what shall we do now?' With such like strange expressions, and shrugging of his shoulders in the pulpit.

• *Counsel.* How long was this before the king was murdered?

*Beaver.* It was a few days before the house of commons made that thing called an Act for his trial.

*Counsel.* What did he say to the members?

*Beaver.* I am coming to it; says he, 'My lords, and you noble gentlemen of the house of commons, you are the Sanhedrim, and the great council of the nation, therefore you must be sure to do justice, and it is from you we expect it: you must not only be inheritors of your ancestors, but you must do as they did; they have opposed tyrannical kings, they have destroyed them; it is you chiefly that we look for justice from. Do not prefer the great Barabbas, Murderer, Tyrant and Traitor, before these poor hearts,' [pointing to the red-coats,] 'and the army, who are our saviours;' and thus for two or three hours time that he spent, he nothing but raked up all the reasons, arguments and examples he could, to persuade them to bring the king to condign, speedy and capital punishment.

*Peters.* I do not know you, are you sure you saw me at that time? Do you know me?

*Beaver.* Yes, sir.

*Peters.* I did not preach there at that time.

*Counsel.* Pray, my lord, will you call Mr. Jessop, who hath the records of the parliament, and can produce the Order, whereby you were appointed to carry on the work of that fast; there was the Order for his preaching, and Order of thanks for his work.

[Mr. Jessop produced the Journal, wherein was the Order following, which was read.]

[Clerk reads.] 'Die Jovis 7 September 1648. Resolved, that there be a day of public Humiliation for this house to seek God in these times of difficulty, and that to-morrow be the day, and kept here in this house. Resolved that Mr. Peters, Mr. Marshal, and Mr. Caryll, be desired to perform the duty on the day of Humiliation with the house to-morrow.'

*Counsel.* That is not if we intend, there was one after that in December 1648.

[Clerk reads.] '20 December 1648. Ordered, That Mr Peters be desired to preach on Friday next, the day of public humiliation, at Margaret's Westminster, in the place of'—

*Counsel.* Call Mr. Chace. After this the work went on, and the High Court of Justice sat; and the first day they sat was Saturday January 20, in Westminster-Hall, the 21st being the Sunday following; I think this gentleman was at White-hall; he will tell you what he preached.

Mr. Chace sworn.

**Chace.** My lord, I heard the prisoner at the bar preaching before Oliver Cromwell and Bradshaw, who was called Lord President of the High Court of Justice, and he took his text out of the Psalms in these words, 'Bind your kings with chains, and your nobles with fetters of iron;' that was part of the text: But says he in his sermon, 'Beloved, it is the last psalm but one, and the next Psalm hath six verses, and twelve Hallelujahs, praise ye the Lord, praise God in his Sanctuary, and so on; for what?' says he, 'Look into my text, there is the reason of it, that kings were bound in chains, &c.' He went on with a story of a Mayor, a Bishop and his man; 'The bishop's man, saith he, being drunk, the mayor laid him by the heels; the bishop sends to the mayor, to know by what authority he imprisoned his servant; the mayor's answer was, there is an act of parliament for it, and neither the bishop nor his man is excepted out of it; and applied it thus: Here is, saith he, a great discourse and talk in the world, what, will ye cut off the king's head? The head of a protestant prince and king? Turn to your Bibles and you shall find it there, Whosoever sheds man's blood, by man shall his blood be shed; (says he) I will even answer them as the mayor did the bishop, here is an act of God, Whosoever sheds man's blood, by man shall his blood be shed; and I see neither king Charles, nor prince Charles, nor prince Rupert, nor prince Maurice, nor any of that rabble, excepted out of it.' And further he said, 'This is the day that I, and many Saints of God besides, have been praying for these many years.'

**Peters.** Ask him whether he took notes.

**Chace.** No Sir, but it being so memorable a sermon I took special notice of it: I came to my brother's house in Shoe lane, and told him; said I, Brother, I have been at White-hall, and have heard the most execrable business that ever was heard in the world by a minister of the Gospel, and told him the words: I observed that Oliver Cromwell did laugh at that time when you were preaching.

**Tho. Tongue sworn.**

**Counsel.** What do you know of the prisoner's preaching?

**Tongue.** Upon January 21, 1649, I was at White-hall, where this gentleman preached, and he preached upon this text, Psalm cxlix. v. 8. 'To bind their kings in chains, and their nobles in links of iron;' in which text this Peters did much applaud the soldiers there; he said he hoped to see such another day following as the day before, and that 'Blessed be God (says this parson Peters) the house, the tower house, is purged, and the house of lords themselves they will down suddenly;' this is all that I well remember at that time. Upon the 28th of January, 1649, next day after Sentence of the king, I heard Peters preach upon

this text in St. James's chapel, Psalm cxlix. 6, 7, 8, 9. 'Let the high praises of God be in their mouth, and a two edged sword in their hands, to execute vengeance on the heathen, and punishment upon the people, to bind their kings with chains, and their nobles with fetters of iron, to execute upon them the judgment written, this honour have all his Saints; praise ye the Lord:' And there he did so Saint the red coats, and so reprobate the poor king's friends! And in the middle of his sermon he took occasion to produce a text, Isaiah xiv, 18, 19, 20. 'All the kings of the nations, even all of them, lie in glory, every one in his own house. But thou art cast out of thy grave like an abominable branch, and as the raiment of those that are slain, thrust through with a sword, that go down to the stones of the pit, as a carcass trodden under feet; thou shalt not be joined with them in burial; because thou hast destroyed thy land, and slain thy people, the seed of evil doers shall never be knowned:' says he, This I did intend to insist and preach upon before the poor wretch, and the poor wretch would not hear me.

**Counsel.** Who did he mean?

**Tongue.** His majesty, who was the day before condemned; saith he, 'Look in your lesser Bibles and you shall find the title is, *The Tyrant's Fall*.'

**Counsel.** That that was spoken of the king of Babylon, the ignominy that was cast upon him, he applies it to the king of England.

**Peters.** Ask him where it was?

**Tongue.** It was in St. James's chapel, Sunday the 28th of Jan. 1649, in the fore-noon.

**Reynold Bowdler sworn.**

**Bowdler.** That which I have now to say is this, I did hear him a few days before the king was murdered preach in St. Sepulchre's church, that he compares the king that was then to die, to Barabbas, a murderer, and in this manner; saith he, 'There is a great company amongst us like the Jews, they cry out, let Christ be crucified, and let Barabbas be released;' still comparing the king to Barabbas the murderer; these were his words, with many more to the same purpose.

**William Rider sworn.**

**Counsel.** Speak what you know concerning the prisoner.

**Rider.** I was at the same time at Church in St. Sepulchre's.

**Counsel.** How long was that before the king died?

**Rider.** It was very near the king's death.

**Counsel.** Was it after the High-Court of Justice sat, as they called it?

**Rider.** About that time it was. My lord, is soon as ever he had read the words of his text, which was, 'He shall call his name Emmanuel,' he presently shook hands with his text, and fell (as he was wont) to news, and there he said, 'The great inquiry now is to know what



'should become of the king; Let that alone,' saith he; and presently he falls to it again, and was pleased to style the king Barabbas; saith he, 'There is a great many of the people had rather Christ should be crucified than Barabbas;' and here he was applauding the soldiers; and said that 'Emmanuel' was written upon the bridles of their horses; and he was speaking of the king's soldiers, saith he, 'I have known eighty thousand of them, and not one of them a gracious person.'

*Counsel.* Now we expect the Answer of the prisoner at the bar, the Indictment hath been fully proved.

*Peters.* I desire that witness may be admitted which I spoke of, his name is Cornelius Glover.

*Counsel.* We have omitted one evidence; we desire Master Walker may be called.

*Mr. Walker sworn.*

*Walker.* On Sunday after the king was first brought to his trial, out of curiosity I went to hear Mr. Peters at White-hall; after he had made a long prayer, saith he, 'I have prayed and preached these twenty years, and now I may say with old Simeon, Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation.\*' Afterwards he speaks of the text, of 'buiding their kings

in chains,' &c. then much reviled the king: But soft there,' saith he, 'I must not talk so here, I am in the king's chapel; there is a very remarkable passage in Amos; Amos went to preach, and Amaziah would not let him, but Amos would preach; the poor wretch would not hear me, but yet I will preach.' Afterwards he speaks of the Mayor of Exeter that committed the Bishop's servant for being drunk; saith the Mayor, 'here is an act of parliament for it, and I do not see that the Bishop nor his man are either of them excepted out of the act;' and saith he, 'in scripture it is said, 'Whosoever sheddeth man's blood, by man shall his blood be shed;' and I do not und that either king Charles, prince Charles, prince Rupert, prince Maurice, or any of that Rabble are excepted.'

*Counsel.* Now, Mr. Peters, you may call your witness.

*Cornelius Glover not sworn.†*

*L. C. Baron.* Where do you dwell?

*Glover.* In Paul's Church-yard.

*L. C. Baron.* What is your quality of life?

*Peters.* A servant of the king's.

*L. C. Baron.* I do not ask you, Mr.

*Peters.*—*Glover.* I belong to the Post-house.

*Peters.* Pray hear him speak.

*L. C. Baron.* What would you have him asked?

*Peters.* Whether I was out of my chamber that day the king suffered?

*L. C. Baron.* What say you to that?

*Glover.* I was come to Mr. Peters a little before that time, to live with him as his servant; it fell out that day he was ill in his chamber all the morning; the soldiers in St. James's house were all gone away; I had a

ferocious as themselves, much more than it resembled the triumphal pomp of a civilized martial nation;—it a civilized nation, or any men who had a sense of generosity, were capable of a personal triumph over the fallen and afflicted."

"Is this a triumph to be consecrated at altars? to be commemorated with grateful thanksgiving? to be offered to the divine humanity with fervent prayer and enthusiastic ejaculation?—These Theban and Thracian Orgies, acted in France, and applauded only in the Old Jewry, I assure you, kindle prophetic enthusiasm in the minds but of very few people in this kingdom; although a saint and apostle, who may have revelations of his own, and who has so completely vanquished all the mean superstitious of the heart, may incline to think it pious and decorous to compare it with the entrance into the world of the Prince of Peace, proclaimed in a holy temple by a venerable sage, and not long before not worse announced by the voice of angels to the quiet innocence of shepherds." Reflections on the late Revolution in France, 1790.

† See the cases of Lord Morley, 18 Car. 2, and of Whitebread, Harcourt, and others, 31 Car. 2, *infra*.

\* On the 4th of Novembér, 1789, Dr. Richard Price, a Non-conforming Minister of eminence, preached in the Old Jewry, a Sermon, principally relating to the events that had then recently taken place in France; in allusion to which, he exclaimed, "What an eventful period is this. I am thankful that I have lived to it. I could almost say, 'Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation.'" Mr. Burke, after adverting to this testimony against Peters, and applying Dr. Price's exclamation to the forcible removal of the 6th of October, 1789, of the King and Queen of France from Versailles to Paris, bursts forth into a copious and most powerful strain of indignant eloquence:

"I find," says he, "a preacher of the gospel prophaning the beautiful and prophetic ejaculation, commonly called 'nunc dimittis,' made on the first presentation of our Saviour in the Temple, and applying it, with an inhuman and unnatural rapture, to the most horrid, atrocious, and afflicting spectacle, that perhaps ever was exhibited to the pity and indignation of mankind. This 'leading in triumph,' a thing in its best form unmanly and irreligious, which fills our preacher with such unhalloved transports, must shock, I believe, the moral taste of every well-born mind. Several English were the-tupified and indignant spectators of that triumph. It was (unless we have been strangely deceived) a spectacle resembling a procession of American savages, entering into Onondaga, after some of their murders called victories, and leading into hovels hung round with scalps, their captives, overpowered with the scoffs and buffets of women as

desire to go see the meeting; where they were at White-hall; saith he, 'Thou seemest to have a great desire to go and look about thee, it is very sad, but if you will go you may. I did go over the park.'

*Counsel.* What time? *Glover.* About noon.

*Counsel.* What hour?

*Glover.* I do not know; I did not stay there; the soldiers and the people filled the place, and I went back again to the chamber; I came back again within a matter of an hour's time.

*Council.* Was the king dead before you came back again?

*Glover.* They said he was not: When I went home he asked me what was doing? I told him there was a great croud, I could not come near; I staid there an hour, and then went out again: and still there was a crowd; and I came back again, and Mr. Peters was in his chamber then.

*Counsel.* Was he in bed or up?

*Glover.* I do not remember.

*Counsel.* How old were you then?

*Glover.* I am not above 32 or 33.

*Counsel.* Was Mr. Peters sick?

*Glover.* Yes, he was melancholy sick as he used to be.

*L. C. Baron.* How long have you been at the Post-house? *Glover.* About five years.

*L. C. Baron.* Mr. Peters, have you any more to ask him?

*Peters.* I brought him to testify that I was not out of my chamber that day, and that I was sick.

*L. C. Baron.* Did you desire to go, or did he send you?

*Glover.* I did desire to go, being newly come to London.

*L. C. Baron.* This gentleman, though not upon oath, is examined, and it is only to one particular, nothing at all to the main proofs.

*Peters.* I bring him only to vindicate myself from that aspersion of my being upon the scaffold.

*L. C. Baron.* They do not lay the weight of their evidence upon that: The king's counsel have done with their evidence, if you have any thing to say, you have your liberty.

*Peters.* May it please your lordships, I will give you an account of the business: I lived 14 years out of England, when I came over I found the wars begun; I began no war, my lord, nor have been the trumpeter; when I came out of the West-Indies, I fled from the war into Ireland, to the Western part there; and it was after the rebellion, when some of the Irish had been stirring there, I went and spent my time there. I was neither at Edgehill, nor Naseby; but, my lord, after I came over there was war that the people were engaged in; I was not here in the beginning of it, but was a stranger to the carriage of it. When I came into the nation I looked after three things: One was that there might be sound Religion; the second was that Learning, and Laws might be maintained; the third, that

the Poor might be cared for; and I must confess I have spent most of my time in these things to this end and purpose: There was a noise in all parts of some miscarriages in matters of Religion, after it was settled I lived in Ireland; I must profess for my own part, solemnly, that my carriage hath been upon these heads. For Religion, I have, through God's mercies, spake of the truths of the Protestant Church, upon this account I did stay to see what God might do: I was sent over to his majesty that we might have a little help in point of Excise and Customs, and encouragement in learning. My lord, this is true, that I being here in the nation and being sent over upon the occasions of the country, and not upon any design; but this I say, (I cannot deny it,) that after I came over, and had seen the state of England, in some measure I did stir, but by strong importunities, the ministers of London deeper than I: I am very sorry to hear of my carriage towards the king; it is my great trouble; I beg pardon for my own folly and weakness; I thought God had a great controversy with the nation, and the Lord was displeased on all hands; that which some people took to I did take unto; I went into the army; I saw at the beginning of it that corruptions grew among them. I suppose none can say I have gone aside from any orthodox truth of the Lord: And now to take off the scandal upon me, and to the business, let me beg of your lordships to consider whatever prejudices or revenge may take up men's hearts, there is a God that knows all: God hath a regard to the people of England: I look upon this nation as the cabinet of the world. That that doth concern the business is this, my lord, that after this time hither I came, and did bear witness to all the world, that there was amongst us something that was for better, and something worse, for the nation; I took advice of some great persons concerning the weightiness of it; I had neither malice nor mischief in my heart against the king; upon this I did engage so far, being invited; I went into the wars, and there I found very strange and several kinds of providences, as this day hath been seen; I do not deny but that I was active, but not to stir in a way that was not honourable. I challenge a great part of the nation to manifest my carriage among them: I shall make it good divers ways; I had so much respect to his majesty, particularly at Windsor, that I propounded to his majesty my thoughts three ways to preserve himself from danger, which were good, as he was pleased to think, though they did not succeed, and the work died; as for malice, I had none in me. It is true, there was a difference amongst us, an army, and an army; I never had a groat or penny from Oliver Cromwell since I knew this place; I profess I have had no end for honour or gain since I set foot upon this shore; I challenge any man that belonged to that party whether they had not the same respect from me as my own party; I have not persecuted any with malice; I will only take off malice.

*L. C. Baron.* Your business is matter of fact.

*Peters.* I am unskilful in law, this that I offer is to shew that I had no malice in me; I was so far from malice, that I have a Certificate, if worth the reading, from one of the most eminent persons in the nation, to shew I had no malice: It is concerning the marquis of Worcester, under his lady's hand, beginning with these words, 'I do here testify that in all the sufferings of my husband, Mr. Peters was my great friend, &c.' I have here a seal (and then produced it) that the earl of Norwich gave me to keep for his sake for saving his life, which I will keep as long as I live.

*L. C. Baron.* I am not willing at all to interrupt you, or hinder you; that which you speak of doing good services is not at all to the point; we do not question you for what good you have done, but for the evil you have done; I hope there is no malice in your heart, nor upon the Court nor Jury, we and they are upon our oaths; and you hear the matter alledged against you; pray come to the matter.

*Peters.* My Lord, I cannot remember them.

*Lord Chief Baron.* Then I will remember you: you are charged by this Indictment for compassing and imagining the death of the king, and there is set forth sundry particulars to prove the overt-act, that you with other persons named in that indictment, did consult and meet together how to bring about the king's death. Then you are charged with several acts of contriving and endeavouring the king's death. Overt-acts that tend to the compassing and imagining the king's death, or any one of these, to encourage the bringing on the king to his death, the consulting or meeting together about it, though you did not sit or sentence; yet if you did any thing tending to that encouragement, or otherwise abet it, comfort, or any wise aid those traitorous persons that did it, in the doing of it you are by law guilty of the whole fact: the proposing and determining the king shall die, though you were not he that actually put him to death, yet notwithstanding, if you did the other, you are guilty of all; if you shall speak any seditious speeches, be they in the pulpit, or out of the pulpit, if you shall utter any thing that tends to sedition, these are open acts, which prove the imagination of the heart: though imagination of the heart be treason, yet it cannot be proved but by open acts, yet the imagination itself is treason. First you did conspire, all the witnesses go along to prove this. Dr. Young saith, you came over from Ireland to his house, and after five days that you were recovered of the flux, you staid there ten weeks: you said yourself there was enough, if it were true, to condemn you or any man: I shall repeat it to you; you told him a narrative, that you came from New England, from thence to Ireland, and then you came to Holland, with an intent to see how you might bring on the kingdom to be a commonwealth: next he saith, you spoke very often against the king by way of disgrace, against him and his family, against the king and

VOL. V.

his offspring, this you said very often: then you spake in vilification of monarchical government, that this commonwealth would never be at peace till 160, or three L's, Lords, Levites, and Lawyers were taken away, at which he replied, then they must be all Switzers, Tinkers or Traitors: he swears you were a colonel, and had a commission; that you would have had him accept of a commission; and that you had two companies come from the west: you told him the parliament had an intent to secure Cromwell and yourself, but that you rid hard for it; and then you confessed you agreed then upon his death, to bring him to trial, and to cut off his head: you did agree together, and he believes it was your advice to Cromwell: your answer was this, that he was more violent than yourself; that he took upon him to be a spy; and that he was no competent witness, because he was under a temptation, because you did not help him to his living, and so conceived it to be malice; you say he was used to take up such courses in his own country; the matter is not whether you had malice to the king's life or monarchy. For the next, one Gunter, he swears, that he was a servant to Mr. Hildesley, at the Star in Coleman-street, and this was in 1648, he saith, that many of the party of Cromwell did use to resort thither, amongst the rest he saw you, he said he came in to them, and their discourse was about Charles Stuart, and the prisoner — and did guess it was about the king; that you were privy to it then; he saith this was three days before Oliver Cromwell went out of town; the effect of that is urged no further than this, that you were so far of the cabal, that you were present with those persons, Cromwell, Ireton, Rich, and others; you said, I was there once with Mr. Nathaniel Fines. Starkey, he saith, that at his father's house Ireton lay, and was quartered there at Windsor, before and when the king was prisoner; that you had your quarters there, and Cromwell too, in that town: the general meeting of the council of war was at his father's house; that Ireton and his wife lying there, you came and resorted thither very often; he saith then, that it appeared that after the council of war had done, many times Rich, and you, and Cromwell, and Ireton, were there together, sometimes till two o'clock in the morning; he saith then, that he did observe there was a fifth person, (he did not remember his name) and you sat usually till two or three in the morning; you had guards about you: he saith further, that Ireton being a domestic, he often discoursed with him, and you came sometimes to be there too: that there being some discourse concerning the king, many times he did assert the law concerning him, that he was *solutus legibus*, as to his person; that you should say, that it was an unequal law, and that you did then discourse fully against the king's government: you said he was a tyrant, not fit for that office: that the office was useless, chargeable and dangerous: these very words, be observed, which

4 D.

afterwards were printed when they took away monarchy. He saith further, that was their full and whole discourse? he saith that his father at supper used to say that usual grace, 'God save the King, Prince, and Realm;' but afterwards that he heard the king was made a prisoner, that his father altering the grace, he said, 'God save his most excellent majesty,' and deliver him out of all his enemies hands; you rose up, and said, 'Old gentleman, your idol will not stand long;' that he did observe you often with them: he saith further, when Bacon was coming out, and speaking some words concerning your frequent affronting the king, you took up a staff and were ready to beat him, and made an uproar: It appears also of your being privy to Cromwell's actions. The next witness is Walkely, and he swears this against you, That he was in the Painted Chamber the next day after the proclamation was made, and there he saw John Goodwin and you: and there was an assembly, and at the middle of the table John Goodwin was, and made a long speech or prayer: that Cromwell would have had the people stay there, but it was ordered they should be turned out: at the end he saw you come out with the rest, there it appeared you were in the consultation; he saith he met the army at St. James's, and there, when they were half past, he saw the king in his coach, and there he saw Mr. Peters like bishop Almoner riding immediately before the king; and at St. James's park he saw you marshalling the soldiers, that he was forced thereupon to go about; he saith further, that within a year or two after the army was raised he heard you say these words, If we can keep up our army seven years longer we need not care for the king and all his posterity.

*Peters.* My lord, I must deny abundance of this; the king commanded me to ride before him, that the bishop of London might come to him.

*L. C. Baron.* But this was three weeks after——The next witness against you is one Proctor; he saith, That day (as the other witness did) he saw you riding just before the king's coach, and because he did his duty the soldiers threw him, horse and all, into a ditch. The next witness is one Hardwick, he saith that when the proclamation was read he saw you in Westminster-hall, and that you said, they had done as good as nothing, unless it was proclaimed in Cheapside and at the Old Exchange; this you said to some of the officers there.

*Peters.* My lord, I cannot acknowledge it.

*L. C. Baron.* The next witness against you is Simpson, he swears he saw you in consultation with Oliver Cromwell, and take sir William Brereton by the hand, and come to Bradshaw's, and this during the time of the king's trial; he further saith, that one day when the king was at his trial you commanded colonel Stubbers to bid his soldiers cry out Justice, Justice, which they cried, and afterwards some of the soldiers spit upon the king.

*Peters.* I do believe that he, that swore that, cannot say I was there.

*L. C. Baron.* Another witness is one Richardson, who saw you the first day in the court; and he said further, that you commended Bradshaw and another, to wit Cook, for their carriage in the trial of the king; that you held up your hands, and said, This is a most glorious beginning of the work.

*Peters.* Whereabouts in the court?

*Richardson.* In the body of the court, called then the High Court of Justice.

*Peters.* My lord, I do not know that ever I was in the body of the court.

*L. C. Baron.* The next witness is sir Jeremy Whichcot, he saith, he heard you often speak scurrilously of the king: and making a narrative of Cromwell's escape, you said there was a meeting, and 'there we resolved to set aside the king;' remember what the other witness said, we agreed, and here we resolved; you said, I cannot but reverence the High Court of Justice, it doth resemble the judging of the world at the last day by the saints: so it was the saints that sat there; I would have preached before the wretch, but the poor wretch would not hear me: you often called him tyrant; I cannot possibly remember the place, things, or words, that are alledged. Then you have another witness, Nunnelley, he saith he came with a warrant to Oliver Cromwell for some money, and that he should say, go and see the beheading of the king at Whitehall; he saith there he met with you (though you said you were not there that day) going to the Banqueting-house; that you spoke to Tench, and whispered in his ear, and that Tench went and knocked staples on the scaffold; he meeting Tench said, what are you a hangman? saith Tench, This day will be a happy day; he saith, after all this Hugh Peters was upon the scaffold, and that he went out with the hangman——

*Peters.* I do profess to your lordships before angels and men that I did not stir out of my chamber that day.

*L. C. Baron.* The counsel doth not put reliance upon that, because of what your witness saith, though his evidence is not satisfactory. The next is Clough, and he swears this, that he saw you in the Painted-Chamber with the council of officers, and there you desired them to call on God for a blessing upon their business, and there you said, 'O Lord, what a mercy it is to see this great city fall down before us! And what a stir is there to bring this great man to trial, without whose blood he will turn us all into blood, if he reign again!' And this was about a month before the king was murdered. You hear it, Mr. Peters.

*Peters.* Some part I did, but it is impossible for me to bear down many witnesses; indeed, my lord, I say this, they are marvellous uncharitable, and speak many false things.

*L. C. Baron.* The next is this, the testimony concerning several sermons of yours;

and let me tell you the pulpit ought not be a place where men with impunity may speak any thing, what they list, of sedition and treason.

*Peters.* I am of the same Judgment myself, my lord.

*L. C. Baron.* And there was a solemn day to seek God, then you preached at St. Margaret's church; this was Mr. Bever; in he came, and heard you talk much of Barabbas and our Saviour; there you fell upon this speaking of the king, It is a sad thing that it should now be a question, whether we should crucify our Saviour Jesus Christ, or that great Barabbas, speaking of the king; you called him traitor, tyrant, murderer of his subjects, and the like, you went on in a way of a story. 'These citizens for a little trading they will have Christ crucified, and the great Barabbas at Windsor released;' and said you, 'the clergy, the assembly, they are all for crucifying Christ, and releasing Barabbas;' you made that expression, 'O Jesus, what shall we do?' The king was a prisoner then at Windsor; you made your application to the parliament that was then present; you told them the people did expect justice from them; you must not prefer the great tyrant and traitor, naming the king, to these poor hearts, (the Redcoats standing by.)

*Peters.* I must profess against most of that.

*L. C. Baron.* There is the same by others. It is further proved by the Order, that you were appointed to preach.

*Peters.* I do not deny I preached, but not these things.

*L. C. Baron.* The next thing is this, there was one Mr. Chace, this was during the trial, he saith you preached at White-hall upon this text, Psalm cxlix. 'To bind their kings in chains, and their nobles in fetters of iron.' You had two or three other verses more; then you made a discourse of a mayor and a bishop's man, the bishop's man being drunk, the mayor committed him to prison; the bishop being angry, asked by what authority? The mayor said, there was an act of parliament for it; he did not find that either the bishop or his man was excepted; you applied that to the king; 'said you, I will shew you an act of the Bible, "Whosoever sheds man's blood, by men shall his blood be shed;" this doth not except the king, prince, prince Rupert, prince Maurice, or any of that Rabbie.'

*Peters.* It is false.

*L. C. Baron.* You said further, 'This is the day that I and many other saints of God have prayed for these many years;' and Oliver Cromwell laughed at that time. The next witness was Tongue, he heard you preach, and he swears the same with the former; that you applauded the soldiers, and that you hoped to see such another day following as the day before; and that blessed be God the house is purged, and the lords will shortly be pulled out; and the 28th day of January, which was the day after the king was sentenced, at St. James's,

his chapel, you took for your text the cxlix, Psalm, 6, 7, 8, and 9 verses, whereof these words were part, 'To bind their kings in chains, and their nobles with fetters of iron;' there in the middle of that sermon, having spoken before of the king, you said you did intend to preach before the poor wretch upon the 14th of Isaiah, 18, 19, and 20 verses, speaking of all the kings of the nations, 'Thou art cast out of thy grave like an abominable branch,' &c. he saith further, you said, 'look upon your lesser Bibles and you will find the title is, "The Tyrant's Fall." There is another witness, that is one Bowdler, a few days before the king's death, at St. Sepulchre's, there you fell upon the old comparison, all along you compared the king to Barabbas; and that a great many would have Christ crucified, and Barabbas released; all along comparing the king to Barabbas. One more, and that was Ryder, he heard this text, 'He shall call his name Emmanuel;' you fell to speak of news; what shall become of the king? And you said 'the king was Barabbas, and a great many would rather have Christ crucified than Barabbas.' And then Mr. Walker he saith, that after the king was first brought to his trial he heard you say this, 'I have prayed and preached this twenty years, and now may I say with old Simeon, "Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation;" He mentions that you made use of the other comparison of the mayor and the bishop's man, and inferred from thence, that the king and prince, &c. were not excepted out of the scripture, where it is said, 'Whosoever sheds man's blood,' &c. You have heard all this witnessed against you, what have you to say for yourself?

*Peters.* These are but single witnesses.

*L. C. Baron.* The statute is two witnesses for treason, but not two to one individual thing, though there are several witnesses have proved the same thing about Barabbas, and our Saviour, 'Bind their kings with chains,' &c. and of your other actions there is a whole Jury of witnesses. Two witnesses expressly, we agreed upon the king's death, and we resolved to set the king aside.

*Peters.* I do not know the witnesses.

*L. C. Baron.* One is sir Jeremy Whitchcot, he other is Dr. Young; you shall do well if you have any thing to invalidate these witnesses to speak it, else the Jury will be sent together to deliver up their verdict.

*Peters.* My lord, if I had time and opportunity, I could take off many of the witnesses, but because their testimony is without controul cannot satisfy myself; I have no skill in the law, else I might have spoke for myself; I do not know what to say more, unless I had more time and counsel.

*Sol. Gen.* If the prisoner can say no more, here is this in it; here are five places where he did consult about the king's death, at Windsor, at Ware, in Coleman-street, in the Painted Chamber, and in Bradshaw's house; and four

witnesses to prove this ; there are two witnesses to his comparison of the king and Barabbas, and two witnesses to his text of binding their kings in chains, &c. Proof that he hath been in action in New-England ; that he came from it with that intent, and then went to Holland ; that he had been in arms ; that he called the day of his majesty's trial a glorious day, resembling the judging of the world by the saints ; he prays for this in the Painted Chamber, preaches for it at White-hull, St. James's Chapel St. Sepulchre's ; what man could more contrive the death of the king than this miserable priest hath done ? The honour of the pulpit is to be vindicated ; and the death of this man will preach better than his life did ; it may be a means to convert many a miserable person, whom the preaching of this person hath seduced ; for many come here and say they did it ' in the ' fear ' of the Lord ; ' and now you see who taught them ; and I hope you will make an example of this carnal prophet.

The Jury went together, and after a little consultation settled in their places.

*Clerk.* Are you agreed in your verdict ?

*Jury.* Yes.

*Clerk.* Who shall say for you ?

*Jury.* Our fore man.

*Clerk.* How say you ? Is the prisoner at the bar Guilty of the treason whereof he stands indicted ? Or not Guilty ?

*Fore-man.* Guilty.

*Clerk.* And so you say all ?

*Jury.* Yes.

*Clerk.* Look to him, keeper.

*Counsel.* We desire Mr. Cook may be brought to the bar, and that they may both have their judgment pronounced.

*Clerk.* John Cook, hold up thy hand ; what hast thou to say why the Court should not pronounce judgment for thee to die according to law ?

*Cook.* I have a few words, matter of law : first, there is no averment in the Indictment, that John Cook mentioned in the Act of Indemnity, is the same with the John Cook mentioned in the Indictment, and that I am, the John Cook mentioned in both.

*L. C. Baron.* This will not help you in this case, you have owned, and have pleaded by the name of John Cook.

*Cook.* The second is this, that the Overt-Acts should be particularly expressed in the Indictment.

*L. C. Baron.* This cannot be alledged in arrest of judgment, the jury have found you guilty of compassing and imagining the death of the king by the statute of 25 Edw. 3, and this cannot help you.

*Cook.* I say it was professionally.

*L. C. Baron.* That hath been over-ruled already ; we have delivered our opinions ; the profession of a lawyer will not excuse them, or any of them, from treason, and this hath been over-ruled, and is over-ruled again.

*Cook.* I humbly conceive that the remain-

ing part of the house of commons were to be judges whether there was a force or not.

*L. C. Baron.* This is all past and over-ruled.

*Cook.* Then I have no more.

*Clerk.* Hugh Peters. Hold up thy hand : what hast thou to say for thyself why judgment should not pass against thee to die according to law ?

*Peters.* I will submit myself to God, and if I have spoken any thing against the Gospel of Christ I am heartily sorry.\*

Silence commanded.

*L. C. Baron.* You are both persons of that ingenuous and liberal education as I hope I shall not need to tell you what it is to die, you have had a great deal of time to think of it ; you could not but think of this issue of your doings long ago, and therefore I shall spare my labour of telling you what it is to die and of that eternity that you are to enter into ; only give me leave in a few words, in relation to both your professions, to say something to shew the nature and heinousness of this offence, the murder of the king. If you were not actually guilty of putting the king to death ; nay, admitting (in charity) you had no intent to go as far as you did, you are by the laws of Christ and this nation, guilty of high-treason, in that you that are a lawyer know very well, (and I speak it that you may lay it to your heart in the convictions of your conscience. I must say to you as Joshua said to Achan, ' my Son, give glory to God, and confess ; ' and it would become you so to do) you know very well it is the law of this nation, that no one house, nor both houses of parliament, have any coercive power over the king, much less to put him to death ; you know, (as you cited very well) that the imprisoning of the king is treason. You know both of you, this is an undoubted truth ; the rule of law is, that the king can do no wrong ; that is the king can do no wrong in the estimation of law ; he may do some particular acts as a private person, but he can do little prejudice in his own person ; if he would hurt any it must be by ministers, in that case the law provides a remedy ; if he doth it by ministers they must answer for it. The king of England is one of those princes who hath an Imperial Crown ; what is that ? It is not to do what he will ; no, but it is that he shall not be punished in his own person if he doth that which in itself is unlawful. Now remember this when you took the oaths of allegiance and supremacy ; (I presume you both did so ;) what was your oath of supremacy ? It was this, that the king was the only supreme governor of these realms ; it goes further, as he was the supreme governor, so he was the only supreme governor, that excludes co-ordination ; you swear farther, that you will to the utmost of your power defend the king against all conspiracies and attempts whatsoever ; truly you

\* See particulars of his Behaviour and Execution, *infra*,

that were a lawyer when you had thus sworn, your fee could be no excuse against what you had sworn to. We know that the king, in his politic or natural capacity, is not only *salus populi*, but *salus reipublicæ*. The law hath taken care that the people shall have justice and right; the king's person ought not to be touched; the king himself is pleased to judge by the law; you see he doth by law question the death of his father; he doth not judge it himself, but the law judges it. Mr. Peters knows very well he subscribed the 39 Articles of Religion; look upon them that were confirmed in 1552, and upon those articles that were confirmed in 13 Elizabeth; the king is there acknowledged to have the chief power in these nations; the meddling with the king was a jesuitical doctrine: this I speak, not that the king should or ought to govern but by the fundamental laws of the land; they that keep within the bounds of the law are happy; you that are a lawyer know this in point of law, and you that are a divine know this in point of divinity. You both know the truth of it, and when you have thought upon it, I hope you will reflect upon that horrid crime, the shedding of royal blood. You see he had granted all those grievances of the people, taken them away, secured them, for the future; and at this very time, when this horrid act was done, you see he had granted all at the desire of the people; he had made those concessions, such, as (were it not in respect of others more than those that treated themselves) they thought was more than could be expected by the nation. You that had a hand in the king's death it falls upon you, the guilt of it, because you were some of those instruments that assisted those persons that broke the treaty; prepare yourselves for that death which you are to die; it is a debt which we all owe to nature; if in this case there is something of shame comes to you it is that you must take as part of the reward of your sin. The only work I have now to do is to pronounce the judgment, and this is the judgment of the Court, and the Court doth award, that both of you be led back to the place from whence you came, and from thence shall be drawn upon a hurdle, &c. and the Lord have mercy upon your souls.

*Clerk.* Crier, make proclamation.

*Clerk.* O Yes, &c. All manner of persons, &c. and all jurors and witnesses, are to appear at this place to-morrow morning at seven of the clock in the morning, upon pain of one hundred pound a piece. So God bless king Charles, &c.

October 15.

Memorandum, That the Bill of Indictment against William Hewlet, alias Howlet, was found at Hicks's Hall, October 12th instant.

Proclamation of the Court being made:

*Clerk of the Crown.* Set William Hewlet, alias Howlet, to the bar: which was done accordingly.

*Clerk.* William Hewlet, alias Howlet, hold up thy hand. Thou standest indicted of high treason in the county of Middlesex, by the name of William Hewlet, alias Howlet, for that thou, &c. How sayest thou, art thou Guilty of the high-treason whereof thou hast been indicted, and art now arraigned? Or Not Guilty?

*Hewlet.* I am Not Guilty, my Lord.

*Clerk.* How wilt thou be tried?

*Hewlet.* By God and the country.

*Clerk.* God send thee a good delivery. Set him aside.

## TRIAL OF DANIEL AXTELL.

October 15, 1660.

*Clerk of the Crown.* Set Axtell to the bar: which was done accordingly.

*Clerk.* Daniel Axtell, hold up thy hand.\*

*Axtell.* Pray, my lord, let me have pen and ink.

*J. C. Baron.* Give Mr. Axtell pen and ink.

*Clerk.* Daniel Axtell, these men that were last called of the jury are to pass, &c. If you will challenge them, or any of them, you must challenge them when they come to the book, before they are sworn.

*L. C. Baron.* Do you know how many you have liberty to challenge? Because I would not have you misinformed, 35 you may challenge peremptorily, and no more.

*Axtell.* I thank your lordship.

*L. C. Baron.* Unless you have any particular cause; if so, you may challenge more.

*Axtell.* I confess I am wholly ignorant of the law.

John Kirke, John Smith, Thomas Morris, Ralph Hulsell, John Sherecroft, Francis Beale, Robert Cromwell, John Gallyard, John Sheldbury, George Ruthe were called, and by the prisoner challenged.

Thomas Bide, Charles Pitfield, Robert Sheppard, William Dod, Thomas Usman, Wil-

\* "Col. Daniel Axtell had been captain, major, and lieutenant-colonel in a regiment of foot; in the last of which employments he had assisted at the trial and execution of the late king. When lieutenant-general Cromwell was sent by the parliament into Ireland with an army against the rebels, and the regiment in which Col. Axtell served was drawn out by lot for that expedition, he cheerfully undertook the employment; and for his fidelity, courage, and conduct, was soon preferred to the head of a regiment; and not long after was made governor of Kilkenny, and the adjacent precinct; which important trust he discharged with diligence and success. In this station he shewed a more than ordinary zeal in punishing those Irish who had been guilty of murdering the protestants. And on this account, as well as for what he had done in relation to the late king, the court had procured him to be excepted out of the act of indemnity." 3 Ludlow, p. 73.

lian Maynerd, George Plucknet, Samuel Harris, John Nicholl of Hendon, Henry Marsh, Thomas Bishop, Thomas Snow, in all twelve, were admitted, and sworn of the Jury.

*Clerk of the Crown.* If any man can inform my lords the king's justices, &c.

*Clerk.* Daniel Axtell, hold up thy hand. Look upon the prisoner you that are sworn, and hearken to your charge; you shall understand that the prisoner stands indicted, &c.

*Counsel.* May it please your lordships, and you gentlemen that are sworn of the Jury, the High Court of Injustice that was erected for trial of the late King, it had all the formalities of a Court to put in execution that bloody act; they had their President, their Counsel, their Chaplain, and their guards; some of their Judge have been already tried, one of their Counsel, and their Chaplain. Now, my lord, we come to the guards, and this gentleman at the bar, that is now the prisoner, he was commander of that black guard, that cruel and bloody guard: The Indictment is, That he did imagine and compass the death of the King; there be several overt acts that are mentioned in the Indictment as evidences of that imagination, as the consultation to bring him to trial, the actual bringing him to trial, and the bloody execution upon the scaffold; our evidence shall be this, that during the time of the trial the prisoner at the bar did command the soldiers in Westminster-hall, himself did keep the entrance into the Court; and when Bradshaw did speak to the King, and told him he trilled away time, and required his Answer to the Charge exhibited in the name of the Commons of England assembled in Parliament, and the good people of England,\* that a noble person in the gallery there cried out, 'It was a lye;' saying that above half the Commons disowned it; saying where are these good people? It is a lye; Oliver Cromwell is a Traitor; this bloody fellow commanded the soldiers to shoot her; he did several times command and encourage the soldiers to cry out, 'Justice, Justice;' and the last day of that horrid trial, called by them 'the Day of Judgment,' he likewise commanded them to cry out, 'Execution, Execution;' and when some of them would not do it, he had the valour to beat them. My lords, and gentlemen of the jury, if we prove any of these particulars to demonstrate unto you that he was guilty of compassing and imagining the King's death, it is equal as if we had proved he did actually cut off the King's head.

Mr. Bodurdoo, Mr. Nutley, Mr. Harrington, Sir Purbeck Temple, Mr. Simpson, Mr. Baker, Mr. Huncks, and Mr. Jeouar, sworn.

*Counsel.* Mr. Simpson, Tell my lords, and the jury, who had the command of the soldiers during the trial of the King in Westminster-hall.

*Simpson.* My lords, (as I said before in the case of Mr. Peters), col. Stubberd and col. Axtell had the command of the soldiers below

stairs, near that which was called the High Court of Justice.

*Axtell.* I desire to know his name, my lord.

*Simpson.* My name is Holland Simpson.

*Counsel.* Did you see him there commanding the soldiers?

*Simpson.* There was a kind of hubbub in the Court; there was a lady (they said it was the lady Fairfax) who at the exhibiting of the Charge against the King, said to be in the name of the Commons and people of England, she spoke out aloud, and said, 'It was a lie, that not half, nor a quarter of the people; Oliver Cromwell is a rogue and a traitor;' they called for a guard, this gentleman he was called, and brought up some musqueteers, and commanded his soldiers to present and give fire against the lady, and commanded her to unmask.

*Axtell.* What lady was it? I desire to know.

*Simpson.* She went by the name of the lady Fairfax; I know not whether it was so or no, it was the common report it was she.

*Clerk.* Mr. Huncks, Pray tell my lord, what you know of the prisoner at the bar.

*Huncks.* My lord, to say positively any thing of the man touching his command I cannot, but only that morning the King died he came into the door of the room where colonel Phayre, col. Hacker, Cromwell, and myself, were, (Ireton and Harrison, lying in bed together in the same room), and then he stood at the door half in and half out; I refused to sign an order for executing the King, as Cromwell ordered me, and some little cross language having passed, saith the prisoner at the bar 'Colonel Huncks, I am ashamed of you, the ship is now coming into the harbour, and will you strike sail before we come to anchor?' This I appeal to yourself; but for crying out, 'Knock them down, shoot them,' I know not who it was; the officers cried, 'Justice,' and some of the soldiers, but I profess I know not who it was particularly; but they cried, 'Justice,' and then I fell a trembling, for I was afraid of the King; but these were the words he used to me, 'Will you strike sail,' &c.

*Axtell.* My lord, I desire to ask him a question.

*J. C. Baron.* Ask him what you will.

*Axtell.* If I am not in the right I hope your lordships will direct me.

*L. C. Baron.* Go on.

*Axtell.* Colonel Huncks, where was it?

*Huncks.* In a little room in Whitehall, where Ireton and Harrison lay in bed together.

*Axtell.* Do you know whereabouts?

*Huncks.* I think I can go to the room again; I appeal to your own conscience before all this people.

*Axtell.* By your favour, sir, the room, I perceive, you know not; and truly, sir, my lord, if you please to give me leave, because he appeals to my conscience, I do appeal to the great God, before whom it may be I shall shortly be arraigned to give an account of all my words, thoughts and actions, I do not remember that ever I had any converse with this man there, or

\* See vol. 4, p. 1122.



met him there, or any of that company there, that day; he was a stranger to me, but I wish that you (to save yourself being in the Warrant for execution) do not make others a peace-offering to save yourself; the Lord that knows my heart I appeal to him; I appeal to your own conscience, because you appeal to my conscience; I never met you, nor saw you there.

*Huncks.* Have you done? Then give me leave; you say you do not know me; I appeal to the true God, when Cromwell took upon him to have the crown, have not I said, What have you got by being Jehu-like? Lord, strike me dead here if it be not true.

*Axtell.* I will not reflect upon him; but because he hath appealed to my conscience therefore I speak it; it is known notoriously how Jehu-like you were, when you were one of the chief guards of his majesty, one of the forty halberters that did oppose every person then for the King; had I had time, and had not been a close prisoner as I was, there were witnesses enough.

*Counsel.* This after our evidence is more proper.

*Huncks.* Spare me not, colonel Axtell.

*L. C. Baron.* Take the old and ancient course, let the witnesses that are produced for the King be all heard, then give your answer to all of them together.

*Axtell.* My memory is not very good.

*L. C. Baron.* You have pen, ink, and paper. Mr. Axtell, is this all that you desire to speak to colonel Huncks?

*Axtell.* Yes, my lord.

*L. C. Baron.* Have you any other questions?

*Counsel.* My lord, we have a few words; he objects as if col. Huncks were under a danger; he is pardoned.

*Axtell.* I desire to ask him upon what account these words were spoke.

*Huncks.* My lord, it was this; Cromwell having a commission, (which I think I heard read here,) col. Hacker was reading of it, my lord, Cromwell he comes to me, and by virtue of that commission he would have me to write a warrant for executing the king, but I refused to write that warrant; the prisoner then standing at the door, (if God bless me I will search all the doors at Whitehall, but I will find it out,) I not doing it, I said, Why should it be offered to me? Says Cromwell, Thou art a peevish fellow; Cromwell fell a writing; as soon as ever he had done that writing, he gave Hacker the pen, what Hacker writes I know not; and upon my refusing, this prisoner at the bar said, 'Col. Huncks, I am now ashamed of you, the ship is now coming into the harbour, and will you now strike sail before you cast anchor?'

*Counsel.* You observe the course of this evidence; there was a warrant of commission directed to three persons, Hacker, Huncks, and Phaire, for execution of the king; Cromwell demanded of this gentleman (col. Huncks) that he should sign a warrant by virtue of that other warrant, and this gentleman refused it: The

prisoner objects this, that he to save himself doth witness this against the prisoner: Gentlemen, he did refuse the thing; have you any thing to ask col. Huncks?

*Axtell.* He says colonel Phaire and Hacker were there, I do not doubt but they will be so conscientious to vindicate me from all this Charge.

*L. C. Baron.* If it be any thing that tends to your defence that will be heard afterwards: but have you any questions to ask colonel Huncks?

*Axtell.* No more; I know nothing of it, if I were to die at this bar presently.

*Counsel.* Sir Purbeck Temple, pray tell my lords and the Jury your knowledge of the carriage of this gentleman touching the trial of his late majesty.

*Sir Purbeck Temple.* My lord, being present, and engaged by some persons of honour, servants of his late majesty, to be present when that horrid murder was acting before this court of justice, (as they called it) I was present at all the trials of the king, and very near him; I heard the king demand from Bradshaw by what authority and commission they proceeded thus strangely to try him. Then I heard the lady Fairfax, and one Mrs. Nelson, (my sister,) after the exhibiting of the Charge in the name of the Commons assembled in parliament, and the Good People of this kingdom, against Charles Stuart, King of England; I say I heard the lady cry out from a gallery over the Court, 'Not half the People; it is false: Where are they, or their consents? Oliver Cromwell is a Traitor.' Upon which I heard the prisoner at the bar cry out, 'Down with the whores, shoot them;' which made me take farther notice of him; seeing him in Westminster-Hall, commanding the soldiers there, I saw him the most active person there; and during the time that the king was urging to be heard, he was then laughing, entertaining his soldiers, scoffing aloud, whilst some of the soldiers, by his suffering, and, I believe, procurement, did fire powder in the palms of their hands, that they did not only offend his majesty's smell, but enforced him to rise up out of his chair, and with his hand to turn away the smoke; and after this he turned about to the people, and smiled upon them, and those soldiers that so rudely treated him: Then turning himself to Bradshaw, said to him and the Court, 'There are some sitting here,' (fixing his eyes upon some persons near Bradshaw) 'that well knew that if I would have forfeited or betrayed the liberties and rights of the people I need not have come hither,' (or words to this effect,) 'but their liberties and rights are dearer and nearer to me than my three kingdoms, nay, than my life itself; therefore I desire you to hear me, and remember that I am your lawful king, that have done you many acts of grace and favour.' After which, this person, Mr. Axtell, prisoner at the bar, commanded his soldiers to cry out 'Justice;' which the soldiers not readily obeying of him, I saw him beat four or five of them

with his cane until they cried out, (with himself) 'Justice, Justice, Execution, Execution,' which made me turn to a noble lord, by whom I then stood, and said, 'Pray, my lord, take notice, there is not above four or five that cry 'out Justice, Justice.' I heard also of their spitting in the king's face; and I think nobody's sufferings have been so like those of our Saviour Christ Jesus, as his majesty's were. After this, this person crying 'Justice, Justice, Execution, Execution,' a second time, the Court proceeded to pass a Sentence: the which his majesty pressed hard 'gainst, and said, 'Sir, before you pass that ugly Sentence, (which I very well understand you are determined to do,) I desire you to hear me; hear me, hear me:' passionately, and most affectionately expressing 'it, which they denying the king, and the noise of 'Justice, Justice, Execution, Execution,' being repeated, they proceeded and read that ugly Sentence of Death: After which his majesty was immediately hurried away from the bar into a common sedan, where he was carried by two common porters; which sedan I followed to the middle of King's-street, where I saw the two porters in reverence go bare, till the soldiers (under the command of the prisoner at the bar) beat them, and would not suffer them to go bare, when they carried him. After this the people cried out, 'What, do you carry the king in a common sedan, as they carry such as have the plague? God deliver your majesty out of such enemies hands.' In which street I was forced to leave the sight of his majesty, occasioned by the injuries and hurts I received in my person from the soldiers under Axtell's command, they carrying him through the streets shouting in triumph. A short time after I received an importunate command from a lady of great honour, (a servant of his majesty's) that I would endeavour to find out where the body of the martyred king was, and to give an account where it then was: Applying myself to Whitehall, after two or three-score cutreaties, I was denied; but understanding that money would do it, I gave the person then under the command of Mr. Axtell, that then kept it, half a piece to shew it me, who in a scoffing manner took me by the hand and said, 'If thou thinkest there is any sanctity or holiness in it, look here:' where I saw the head of that blessed martyred king lie in a coffin with his body, which smiled as perfectly as if it had been alive; this is the sad account of the martyred king, and this horrid prisoner, Mr. Axtell.

*Axtell.* My lord, may I ask that gentleman some questions?

*L. C. Baron.* Yes, yes.

*Axtell.* My lord, he seems to say that I bid the soldiers cry out for Justice; he doth not say at all I was there in command, but he saith a lady, by report the lady Fairfax, spake some words, and that I should bid the soldiers silence her; truly I desire to know the certainty of the place where I stood.

*Sir Purbeck Temple.* My lords, and gentlemen of the Jury, I saw this person standing within a pike or two's length, as I can guess it, (I remember the place within a yard of the ground in Westminster-hall,) I do not say this person sat in the Court as a principal officer, that did then hold his majesty prisoner at the bar; I did not say it was a lady unknown, or reported to be such a one; but I said it was the lady Fairfax, and my own sister, Mrs. Nelson, and he cried, 'Shoot the whores.'

*Axtell.* He seems now to say I commanded the guards: I never was a guard to his majesty, or had any thing to do in that business, but it was wholly committed to a company of men I know not of. That gentleman that spoke I have no acquaintance with him, I think he did not know me at that time.

*L. C. Baron.* Have you any thing to ask him?

*Sir Purbeck Temple.* My lord, another passage he puts into my memory; when I did observe a thousand of sad faces, I saw none laughing but yourself, as if you had been carousing and entertaining the soldiers. I do not charge you that you commanded those halberteers, but those red-coats; you were all in red: I saw you cane those four or five soldiers I mentioned, till they cried Justice, Justice, with you; and that with the powder in the palms of their hands they forced the king to rise out of his chair, which you were much pleased with, and laughed at.

*Axtell.* I say before the Lord, before whom I must be judged again for this, I do deny this whole account.

*Griffith Bodurdoc*, esq. sworn.

*Bodurdoc.* My lords, and you gentlemen of the Jury, I was at the time of this sad trial in Westminster-hall.

*Axtell.* Your name, Sir, I beseech you?

*Counsel.* His name is Mr. Bodurdoc.

*Bodurdoc.* I say I was all the time of the king's trial in Westminster-hall; I was in a gallery that I had out of my house where I then lived, just under and besides the House of Commons, and I do remember I saw this gentleman there; I do think he was then called lieut. col. Axtell, so far as I remember: truly I have not seen him since, before this day, nor have had any reason to have known him, but that I saw him very active in giving commands to the soldiers there: This gentleman was keeping the Court, letting some in, and putting others out: he seemed to have the command of it: one day (whether it was about some passage, or their President's speech, I know not) there was a lady in the same gallery where I stood, and some muttering, 'It is a lie, not half 'the People,' or words to this effect: he the now prisoner at the bar, standing below in the Court, without the bar, not far from Deady, with five or six soldiers, upon this muttering and disturbance (as he apprehended) to the Court, he called to the soldiers, saying, 'Shoot them, if they speak one word more:' they did

also present the muzzles of their muskets up to the gallery: my lord, by this we were very hush: after that immediately within half a quarter of an hour, Dendy came to the gallery from the Court, to know who it was made that disturbance: but the lady was withdrawn into my chamber, and did not come out afterwards.

*Axtell.* Where was this, Sir?

*L. C. Baron.* What is your desire?

*Axtell.* My lord, where he saw me then?

*L. C. Baron.* Mr. Bodurdoo, you hear the question.

*Mr. Bodurdoo.* There was a gallery, which I do believe is yet standing, and the Court was just underneath the gallery, and you were just underneath the gallery, and five or six soldiers with you.

*Richard Young* sworn.

*Counsel.* What do you know of the carriage of the prisoner at the time of the trial?

*Young.* I was upon a scaffold, whereby I did see what was done in the Hall, I saw that lieutenant Axtell was busy and very active in encouraging the soldiers to say, 'Let us have Justice against the king.'

*Axtell.* I desire to ask Mr. Young one question; others say that the word was, 'Cry for Justice,' this gentleman is pleased to make some addition, 'Let us have Justice against the king.'

*Young.* No, not against the king, but I conceived you meant against the king.

*Axtell.* I cry you mercy, you do but conceive so.

*Young.* You were upon the right hand of the Hall, almost at the corner of the pavement; it could not be otherwise applied.

*John Jeonar* sworn.

*Counsel.* Speak your knowledge of col. Axtell's carriage at the High-Court of Justice.

*Jonar.* I had the honour to wait upon the king as a domestic servant, to the time of his death, that day, which was the first day the king was brought to his trial, I did wait upon him among other servants, we stood close to the bar where the king was, some three or four of us; colonel Axtell was upon the right hand of us commanding the guard, to keep things in order when the Court was to be withdrawn; (the many circumstances about the lady Fairfax shall be omitted,) the President commanded the prisoner to be withdrawn, with that col. Axtell steps down before me to draw out his guard; this I heard him say, soldiers, cry for Justice, Justice; I was the next man to him; and upon the last day of the trial he did come down in the same manner, and bid the Soldiers cry out for Execution, Execution.

*Axtell.* I do desire a question may be asked of that gentleman; I must confess I did not know the gentleman at that time, though he said he knew me; he seems to say that at the first day I encouraged the Soldiers to cry, 'Justice, Justice,' and the last day, 'Execution, Execution,' what place was this in, Sir?

*Jonar.* I tell you the king was brought from Cotton-House, through a guard, that you

managed, of musqueteers, and with a guard of partizans, besides, there was myself and others there. When we came up we got us close to the bar as we could, you were passing up and down from above and below: When the Court was dissolved, you stepped down just before to draw your guard to make ready, and to cry, Justice, Justice, and the second time, Execution, Execution, you were very near me, and then you cried, Justice, Justice, Execution, Execution.

*Axtell.* Are you certain? I have heard other men, I confess, accused for this, some other officers.

*Jonar.* I did hear you, I do know you by sight.

*Counsel.* You know him now to be the same person?—*Jonar.* Yes.

*Samuel Burden* sworn.

*Counsel.* Tell my lord and the jury what you know of the carriage of the prisoner.

*Burden.* My lords, and gentlemen, I do believe col. Axtell knows me well enough, I was then under his own command at White-Hall; there were some cavaliers then in the regiment; it was my fortune I came into your Company, I wish I never had. You commanded more besides myself to be a witness against the king, and Justice Cook took my Examination; you brought me in, you commanded the guards that time at White-Hall, when the king was upon his trial.

*Axtell.* What more?

*Burden.* And you commanded Elisha Axtell, with a file of soldiers, to take a boat and go down to the common hang man, who lived beyond the Tower, to execute the king; he is now Sheppard's, sergeant in Ireland.

*Axtell.* My lord, I desire to ask him a question, he was pleased to say I desired him to be a witness.—*Burden.* Yes.

*Axtell.* Where was it?

*Burden.* In the Court at White-Hall.

*Axtell.* My lord, I have seen the printed list of witnesses against the king, and in that list you shall find no such name.

*Burden.* I have been a prisoner in Dublin by your means.

*Axtell.* My lord, I hope you will take notice of that.

*Counsel.* Burden, do you remember any of his commands to Web, to draw up in the Banqueting House?

*Burden.* He commanded Web to draw up in the Banqueting-House, during the time of execution, his own Company. I was one of his own Company then.

*Counsel.* In order to what?

*Burden.* For Execution.

*Axtell.* My lord, is Web here?

*Burden.* He is in Dublin.

*Axtell.* I wish he were here.

*Edward Cook* sworn.

*Cook.* May it please your honour, my lord, the last day of the trial of his majesty I came into Westminster-Hall, coming where the Court was, I did see col. Axtell, the prisoner at the bar, there with some musqueteers.

1 E.

*Counsel.* What day was this?

*Cook.* The last day of his majesty's trial.

*L. C. Baron.* Go on, sir.

*Cook.* Standing there a little while his majesty came guarded with some halberts, when he came by the soldiers that stood with col. Axtell, his majesty bowed, and afterwards put off his hat, and went up to the Court: I could not know what Bradshaw said to him, I stood below: I heard him say he was brought by the consent of the commons and people of England: there stood a lady above in a gallery, crying out, It is a lie, where are the people? or their consents? Cromwell is a traitor: Whereupon col. Axtell standing by, saith he, What drab is that that disturbs the Court? Come down, or I will fetch you down.

*Mr. Nelson* sworn.

*Counsel.* Tell my lords, and gentlemen of the jury, touching the discourse between you and the prisoner at the bar in Dublin.

*Nelson.* My lords, and gentlemen of the jury, upon a discourse with the prisoner at the bar in Dublin, five or six years since, upon the platform in that Castle we discoursed of the late king's having had several reports: I desired to know of him who it was executed the king, thinking he might inform me; he was pleased to tell me this, saith he, the persons that were employed in that service, you know them as well as I do: truly sir, not I, said I, I saw them in yizards, but not their visage, as I knew of; yes, saith he, you do know them; it is true, saith he, myself and others were employed in that affair, in order to the execution; but there were several persons came and offered themselves out of a kind of zeal, to do the thing, but we did not think it proper to employ persons who we did not know, but we made choice of a couple of stout persons; pray let me hear their names, said I; said he, it was Hewlet and Walker; I desired to know their reward; truly saith he, I do not know whether 30*l.* a piece, or between them; I said it was a small reward for a work of that nature; truly, saith he, that was all.\*

*Axtell.* You named one man, I did not hear the other named.

*Nelson.* I named Hewlet and Walker; he was one that managed the execution, he told me so, and it pleased you, Sir.

*Axtell.* He is pleased to say that in Ireland there was such conference; was any body by?

*Nelson.* No, sir.

\* As to the question, who actually beheaded the king, see the note to the king's Trial *ante*, vol. 4, p. 1111, and the articles there referred to; also the "Life of Cromwell" and Lilly's History of his Life and Times.

In the Gentleman's Magazine for Nov. 1767 (vol. 37, p. 548, 549.) and Jan. 1768, vol. 38, p. 11, are three letters designed to shew that Wm. Walker, a mathematician it seems, who died at Darnall, in the parish of Sheldfield, Nov. 4th, 1700, was the person who beheaded king Charles. In addition to the testimony of Nel-

*Axtell.* Did I name any body to you?

*Nelson.* You named those two persons.

*Axtell.* Certainly I must invent them then, for I had no more knowledge of them than any one here.

*Nelson.* You told me you were one of them that had the managing of that affair.

*Counsel.* My lord, we have done with our Evidence; those particulars that were first opened to you have rendered the prisoner much a blacker person than we thought: we leave him to his defence.

*Axtell.* May it please your lordships in the first place, because I am ignorant in the laws, I desire to know upon what statute this indictment is grounded.

*L. C. Baron.* It is grounded upon 25 Ed. 3.

*Axtell.* My lords, I must acknowledge my ignorance of the laws, being a thing I never studied, nor have the knowledge of, but I have heard it is the duty of your lordships and the judges to be of counsel for the prisoner in things wherein he is ignorant in matter of law, to make his just defence; and therefore, my lord, the indictment itself being matter of law, if your lordships please not to grant me counsel to speak to matters of law, I humbly pray that your lordships would be pleased that for want of knowledge, formalities, punctilioes, and niceties of the law, I might not undo myself: I have heard by a learned judge, that though the judge be of counsel to the king, yet by his oath he is also to be counsellor to the prisoner, and stands as mediator between king and prisoner; and therefore, my lord, I shall beg that humble favour, that wherein I shall fall short to make the best improvement in my plea in matter of law, that your lordships will help me, and not take advantages against me, as to the niceties, formalities, and punctilioes of the law; and, my lord, this is a resemblance of that

son, upon the trial of Axtell and Hewlet, Walker's epitaph on a brass plate in Trinity church Sheffield, is cited, which contains this passage "*Vixit durante nupero interregno, munis arduis sub Mercurio non Martis vexillo laudabiliter functus redeunte rege Car. 2do in prædium paternum, templo huic vicinum, &c. lubens*," and it is stated to be "a current report among the oldest people there, that this man when upon his death bed was in the utmost distress and anxiety of mind, from which he could not be relieved, till he had openly confessed that king Charles 1, was beheaded by his hand," and mention is made that a warrant had been issued for his apprehension.

"In 1685, Rumbold, the owner of the Rye House," (see the Trials of Walcot, A. D. 1683, *infra*) "upon his trial in Scotland, being asked if he was one of the masked executioners on Charles the First's scaffold, declared he was not, but that he was one of Oliver Cromwell's regiment then, and was on horseback at Whitehall that day, as one of the guard about the scaffold." 1 Fountainhall's Decisions, 365. See Rumbold's Case, *infra*.

great day, where Christ will be judge, and will judge the secrets of all hearts, and of all words, and all persons, and by him all actions are weighed, knows all our hearts whether there be malice, or how it stands in the frame of each heart before him in this place; and therefore I hope there will be nothing by pre-judging, or any thing by precluding, to be so black a person as it seemed to be said against me. My lords, I must shorten the time, and come to speak as to the authority.

*L. C. Baron.* As to what, sir?

*Axtell.* I speak as to the authority by which, or under which, I acted; I humbly conceive, my lord, under favour, that I am not within the compass of that statute of the 25 Ed. 3, for that questionless must intend private persons, counselling, compassing, or imagining the death of the king. But you know, my lords, the war was first started by the lords and commons, the parliament of England, and by virtue of their authority was forced to be raised, and they pretended by law that the right of the militia was in them; and your lordships will remember in several declarations and acts that were mutually exchanged between his majesty and parliament; and, my lord, that was the authority, the lords and commons assembled in parliament raised a force, and made the earl of Essex general, and after him the earl of Manchester, of the eastern association, and after that sir Thomas Fairfax, lord general of the forces; by this authority I acted, and this authority I humbly conceive to be legal, because this parliament was called by the king's writ, chosen by the people, and passed a bill they should not be dissolved without their own consents; that the parliament was in being when the trial was, and a question whether yet legally dissolved.

In the fourth place, they were not only owned and obeyed at home, but abroad, to be the chief authority of the nation, and also owned by foreign states and kingdoms, who sent ambassadors to that purpose; under them did all the judges of the land act, who ought to be the eye of the land, and the very light of the people, to guide them in their right actions; and I remember the judges upon trial, (I have read it of high-treason,) judge Thorp, Nichols and Jermin have declared it publicly, that it was a lawful justifiable thing by the law of the land to obey the parliament of England. My lord, it further appears as to their authority over the people of this nation, petitioning them as the supreme and lawful authority: and, my lords, as I have heard it hath been objected, that the houses of lords and commons could make no act, truly, my lord, if you will not allow them to be acts, though they intitle them so, call them so, and are obeyed as so, by the judges ministers, and officers of state, and by all other persons in the nation, yet I hope they cannot be denied to be orders of parliament; and were they no more but orders, yet were they sufficient, as I humbly conceive, to bear out such as acted thereby. And, my lord, the parliament

thus constituted, and having made their generals, he, by their authority, did constitute and appoint me to be an inferior officer in the army, serving them in the quarters of the parliament, and under and within their power; and what I have done, my lord, it hath been done only as a soldier, deriving my power from the general; he had his power from the fountain, to wit, the lords and commons; and, my lord, this being done, as hath been said by several, that I was there, and had command at Westminster-Hall, truly, my lord, if the parliament command the general, and the general the inferior officers, I am bound by my commission, according to the laws and customs of war, to be where the regiment is; I came not thither voluntarily, but by command of the general, who had a commission (as I said before) from the parliament. I was no counsellor, no contriver, I was no parliament man, none of the judges, none that sentenced, signed, none that had any hand in the Execution, only that which is charged is, that I was an officer in the army; if that be so great a crime, I conceive I am no more guilty than the earl of Essex, Fairfax, or lord Manchester.

*Judge Mallet.* You are not charged as you were an officer of the army.

*Axtell.* My lords, that is the main thing they do insist upon: my lord, I am no more guilty than his excellency the lord general Monk, who acted by the same authority, and all the people in the three nations; and my lord, I do humbly suppose, if the authority had been only an authority in fact, and not right, yet those that acted under them ought not to be questioned; but if the authority commanded, whatsoever offence they committed, especially that that guided me, was no less than the declared judgment of the lords and commons sitting in parliament; they declared that was their right, as to the militia; and having explained several statutes of Henry the 7th, wherein the king having interchanged declarations with the parliament, the parliament comes to make an explanation on that statute; and, my lord, it is in folio 280, wherein they do positively expound it, and declare it as their allowed judgment. To clear up all scruples to all that should take up arms for them, saith the parliament there, as to the statute of 11th of Henry the 7th, chapter the first, which is printed at large, comes there to explain it in general, and comes here, folio 281, and gives this judgment; 'It is not, say they, agreeable to reason, or conscience, that any one's duty should be known, if the judgment of the high-court of parliament be not a rule or guide to them.' In the next place this is the next guidance, rule, and judgment of parliament, upon the exposition of this statute, and as they have said in several places, (was it not too much to take up your lordship's time,) they are the proper judges and expounders of the law. The high-court of parliament have taken upon them to expound the law, and said that we lawyers will give the meaning of the

text contrary to what they have expounded the meaning under their hands: in the same declaration his majesty is pleased to quit that statute upon which I stand indicted, the 25th of Edward 3, where they do, my lord, expound that very statute in the declaration made in 1643, folio 722. I come to the declared judgment, wherein they did positively say, that the persons that do act under their authority ought not to be questioned as persons guilty, folio 727, that is the exposition that the lords and commons assembled in parliament do make upon the statute.

*Counsel.* My lord, this is an argumentation of discourse in justification of his proceedings, we desire to know what he will answer as to the plea.

*Axtell.* My lords, I have this further to say, that if a house of commons assembled in parliament may be guilty of treason, (for the truth is, if I acted treason, that acted under the authority of the lords and commons in parliament, and of the commons in parliament, then doubtless they must begin the treason :) if the house of commons, who are the collective body and representation of the nation, be guilty, all the people of England, who chuse them, are guilty too; and then where will there be a jury to try this? Concerning the commons alone I have been over-ruled.

*L. C. Baron.* If you have any thing to say to the lords and commons, answer to your charge; your charge is nothing of the lords and commons, but what you acted when the house was broke and forced.

*Counsel.* You cannot but know that there is nothing charged against you, for which you can so much as pretend an authority of the lords and commons; you know before you could do this horrid murder, you were the persons that destroyed the lords and commons both; indeed you ravel in a business, to make people gaze upon you without any ground.

*Axtell.* I am upon my life, I hope you will hear me patiently.

*L. C. Baron.* God forbid but we should.

*Axtell.* I do desire to assert my authority; if any thing was done upon the house of lords and commons I do not come here to justify their actions, I was not concerned in it. My next plea is this; that if a house of commons can be charged guilty of high-treason as a community, the distributive body, must needs be guilty.

*Court.* If there should have been 20<sup>or</sup> 40 men come out of the house of commons, and should murder a man, they must answer for that; it is not the community that can do such an act of treason: these persons that you call a house of commons, there was but 26 of them, and these must be the people; this is the state of the case; and when you have thrust out thrice the number of those remaining, only those can serve your turn.

*Lord Annesley.* Mr. Axtell, I am very sorry to see you in that place, and it troubles me as much to hear you vent that for an authority;

which you know yourself was no authority; you would now for your defence for life, (and it is reason you should make as full a defence for life as you can,) you would shelter yourself under that authority, which I am sorry I must say you were one of the greatest violaters of. You cannot forget how near a close of this bloody war, by the mercy of God, this nation was, when the army interposed, whose trade it was to live by war, when they had felt so much of the sweet of war, they would not suffer the people to enjoy peace, though the lords and representatives in parliament had agreed to it; a treaty was begun, terms of peace propounded and agreed to; this you cannot forget, and will have no need of notes, or books to help your memory: When the people groaned under the miseries of War, and thirsted after peace, then came up the army, who were servants to the parliament till that time, taking upon them the authority; (you cannot forget that yourself was one of the number that came to offer accusations against the majority of the commons house, calling them rotten members;) the house of lords was not then suffered to sit, they would not join in that ordinance that was preparing for the trial of the king; when the lords had refused, they were no longer fit to be lords neither; then comes in a new authority which we never heard of before; a remnant of the house of commons joining with the army that had driven away the greatest part of the house of commons; (for in all assemblies courts the major part must determine, or no determination,) after this course was taken, then is an act set on foot, they take upon them by votes of their own to be the parliament of England; that the supreme power of the nation is in the representatives of the people; who were they? Those few only that remained; almost all the cities, counties and boroughs of England had none left to represent them, they were driven away by force; then was this act of parliament (such an act as was never heard of before) set on foot and passed as an act by a few of the house of commons; if you can plead this for your defence, this is the act that you must shelter under. But you know the lords and commons had unanimously resolved for peace, and so agree with the king. If this act will be any defence, you may plead it to the full; and this is all you have to say, therefore go upon no foreign matter.

*Axtell.* If it please your lordship, that worthy lord that spoke last is pleased to say, that I was one of the persons that did accuse some of those members of parliament; truly, my lord, I never did come to the Commons' bar but once, presenting a petition; and for my hand either in charging any of the members, or excluding any of them, I never had any hand in that matter; this is all to that part. Next, I humbly conceive here I must ground my bottom, and if I perish, I perish by a judgment in a parliament; my commission that did authorize me to obey my general, was given me when the lords and commons sate in parliament; I had no

other commission than this: My lord Fairfax commanded the army after the King's death by the like commission; I did but my duty in going to my regiment; the general saith, go to such a place, stay there; if I refuse, by the law of war I die; if I obey, I am in danger likewise; I say my commission was given me by the lords and commons, and therefore I hope, my lord, that what I have said and offered in that particular is not truthless, but of weight.

*Court.* The effect of your commission is only to make you an officer.

*Axtell.* My commission bears date the 27th of March 1648, ten months before the King's death; we had no other commissions, therefore I humbly conceive the question will be this in point of law, and I humbly desire it may be truly and fairly stated by your lordship, and these honourable judges, that whether a man being guided by the judgment of the lords and commons assembled in parliament, and having declared their judgments and expositions of that statute of the 25th of Edward the Third, and acting only by that judgment of parliament, and under their authority, can be questioned for treason. That, my lord, is a question that I do humbly think is a point in law, and that you will please fairly and truly to state it, whether I am within the compass of that statute whereupon I am indicted.

*Counsel.* My lord, we do not charge him with any thing that he did act under the colour of his commission, or with any thing he did before that, but that which we charge him with are the acts that he did at the trial of the King; shew us your commission from the lords and commons assembled in parliament, for trial and execution of the King, you say something; we do not charge him for any thing done by virtue of that commission, but with those violent acts that he did in encouraging the soldiers to cry, 'Justice, Justice, Execution, Execution,' and all those other violent actions of his own malicious heart against the King. We humbly beseech you he may answer to that which is the Charge against him, and that is, the compassing and imagining the death of the late King, and his declaring that by those overt acts that we have proved. My lords, we desire that the prisoner at the bar may remember that he is not indicted for levying war against the King; if so, then that, sir, which you offer, might be given as a plea, and we should have spoken to it; but you are indicted for compassing and imagining the death of the King; and that which we have given in evidence were the subsequent overt acts to prove the same.

*Axtell.* I hope you will not think it much to give me some more freedom for my own defence for life; My lord, I must needs say, though there was a force on the parliament, I am not to justify it; I was no lawyer, no statesman, no counsellor, but a soldier; and if the general, who had a commission from the lords and commons, and that some years before and after the King's death, be not guilty of treason, what I did was by command from my general;

and though I am charged with being in arms in Westminster-hall, and at such and such a place, yet it was not a voluntary act, for I was bound to obey my general; I do humbly pray that I may have your lordship's judgment in this point; I must say it was from the sense of their exposition of the law, and of the statutes, and from the authority, that every one took up arms for, and served them, and obeyed either the one general, or the other; I say it was under this very authority, and this must needs acquit me from all the guilt that is laid upon me.

*L. C. Baron.* You put yourself upon the judgment of the Court upon this which you call a point in law. First, It is manifest that there is no excuse at all for treason; no man by his commission can warrant the doing of an act which is treason: you must take notice of the authority, whether it be good or no; your commission was not to put the King to death, but on the contrary, to preserve the King's life. The lords and commons, what they did we do not meddle with; the reason and ground of what they did was the preservation of the King's person, as well as the maintenance of the laws and liberties of this nation; they made protestations, declarations, and oaths, for the preservation of the King's person; and you could not but take notice of those things: Now whereas you go about to shroud yourself under the lord Fairfax, he had no such power, and therefore you can challenge no more than he had; and to what you say concerning the judgment of the parliament, there will be a great deal of difference between a particular case and a declaration of lords and commons; there is nothing you have said that hath any thing of force, and God forbid you should make use of it; but I must tell you, you could not but notoriously know all those transactions, that were in the army, what the army had done, that they came up with swords in their hands, and turned out whom they would; you saw what the lords and commons had done, that the treaty was ready for its birth; and then you came up with your myrmidons, with force and arms, and excluded the greatest part of the members, and then the lords were laid aside: It is true, the lords were not wholly dissolved, but they would not suffer them to sit, nor act at all, and this was apparent to the nation. So that this was but a colour and pretence of a parliament, that a few persons, for so they were, but an eighth part of the house of commons, should take upon them to act as an house, and of that eighth part (which was but forty-six in the whole) there was but twenty-six that voted that act which you say you obeyed: but you say you obeyed the general; you are not to obey the general in this case; for the facts that you have committed are not charged as acts of war; you are not charged for bringing the soldiers in, but for those violent actions that you were guilty of there; you made the soldiers cry out, 'Justice, Justice, Execution, Execution;' you sent officiously for a hangman to come down to you; your commission gave you no power for this; the

death of the King you know how it was designed; you know the act for the bringing in of that commission (as they called it) to sit in justice was after the house of commons was reduced to a very small number, and some of those dissenting too; what you did act under that authority, if you can justify it, in the name of God say so; but do not engage the nation in those things which they abhorred, and by the mercy of God are laid asleep.

Mr. Justice *Foster*. You begin at the wrong end; you ought, as all men ought to do, first to answer the matter of fact, and not to put in those long dilatory pleas, till you have answered the matter of fact, whether those things charged on you be true or not; then if you have any thing further to say for yourself by way of excuse, it will be the time to speak, and not before.

*Axtell*. May it please your lordships, I humbly conceive I am upon that method to the first part of the witness: they accuse me for commanding my soldiers in Westminster-hall, then I must prove my authority, which I have been about to do, and declared the judgment of parliament.

*L. C. Baron*. The Court have heard you with a great deal of patience, and that which is not at all to the business.

*Axtell*. I only refer this us to the authority: (I humbly conceive you will give me leave to insist upon this, and how far I may improve it for my own defence:) here is the Commission by which my lord Fairfax acted: And that after the king's death: and I acted by the same authority he did: I had not been at Westminster-hall but on the command of the General.

*Court*. Doth that Commission authorise you to cry, Justice, Justice? And to look up and down to get witnesses against the king: Is that in your Commission?

*Axtell*. I am to serve and obey all my superior officers, that is my Commission: if I do not I die by the law of war.

*Court*. You are to obey them in their just commands: all unjust commands are invalid. \* If our superiors should command us to undue and irregular things, (much more if to the committing of Treason) we are in each case to make use of our passive, not active, obedience.

*Axtell*. Under favour, it is not proved, that I did either compass or imagine the king's death: that is matter of fact.

\* "Memorandum, That upon the trial of one Axtell, a soldier, who commanded the guards at the king's trial, and at his murder: he justified all that he did as a soldier, by the command of his superior officer, whom he must obey or die. It was resolved that was no excuse, for his superior was a Traitor, and all that joined with him in that act were Traitors, and did by that approve the Treason: and where the command is traitorous, there the obedience to that command is also traitorous." Kelyng, p. 13.

*Court*. Let us try that.

*Axtell*. My lord, I did nothing but as a mere soldier: I had authority from the General: I would leave this before your lordships and the Jury, that what I have done hath been by authority of the General.

*Lord Hollis*. Sir, a word to you: if you could satisfy the Court that you had received a Commission from the General to do those things with which you stand charged it were something, then were it proper for you to plead it, and the Court to judge. Pray take this along with you, the General gave you no such command: what you are charged with in the Indictment is, for compassing and imagining the death of the king, and that by such and such overt-acts, as making your soldiers cry out Justice and Execution, for being active and forward in sending for the Executioner, and such other acts: prove these are in your Commission, and you say something: I am sure you cannot be ignorant that that very authority that you now do urge to give life and power to your actions, that you destroyed it, laid it in the dust, acted contrary to it several ways: when the parliament protested against fetching the king from Holmby, as they did, when they went on proceeding in the way of peace, then came you up to the bar, (I think you yourself,) and charged some of the members: first eleven as rotten members, and these men were forced away: this you know your General had no Commission to do: and this you know was a violation of that power that gave your General the Commission. After that, when the treaty was brought on in the Isle of Wight, when there was great hopes of peace, then you saw the king was hurried thence by force, which the parliament protested against. After that, when both the house of commons and lords came to consider of one particular that passed, they resolved that it was sufficient ground to proceed on for the settlement of peace; then did you fall upon these houses, and tear them in pieces, and throwing out above 200, suffered only about 40 to remain, and they were glad to send for one member out of prison to make up a house. That which you say of the supreme authority, and that by virtue of which you did act, it shews that you did not at all go by any authority, but you followed your own lusts; and therefore do not sew these fig-leaves together, which will stand you in no stead; if you would apply yourself to answer that which you are charged with, it were something.

*Axtell*. I do desire to have no more interruptions than is meet in making my own Defence. My lord, here are many things by way of motive urged to the Jury which is not within the Charge, I desire I may have that fair play, that nothing may be urged but what is in the Charge.

*L. C. Baron*. You give the occasion, Mr. Axtell, keep to the matter, and you shall not be interrupted.

*Lord Hollis*. I shall be very sorry to urge



any thing against you which doth not necessarily follow; for what you say touching your authority, I shall shew you have no authority.

*Axtell.* My lord, I have the same Commission as the General; what I did was not of mine own head, I had a command: As for all that hath been charged against me I shall say this, I was none of the Court, I did not fetch the king from the Isle of Wight, nor advised, compassed, or imagined, his death, or sentenced him to death, or signed the warrant for his execution, or executed him; I am none of them, my lords; and therefore whoever did make any breach upon the House of Commons, they were grandees, persons of a greater quality; I was an inferior officer; I was never at the house bar, but upon presenting one petition to the parliament from the army. I shall now come to speak to the evidence which hath been given particularly against me; and the first, my lords, is Mr. Simpson, he saith, I had the command of the guards at Westminster-hall: My lords, I have told you already, shewn you by what authority I came thither, and that I ought not to refuse; if I had, according to the laws of war I must have suffered death; and that is all as to Mr. Simpson, only that a lady (he knows not who) spake something there.

*L. C. Baron.* He saith he heard you bid the soldiers give fire against the lady.

*Axtell.* My lord, I must say, if there was any lady that did speak, who she was I know no more than the least child here; but, my lord, to silence a lady I suppose is no Treason; if a lady will talk impertinently, it is no Treason to bid her hold her tongue.

*L. C. Baron.* A lady was speaking pertinently enough, when she heard Bradshaw say to the king, such a Charge is exhibited, a Charge of High Treason against him 'in the name of the Commons assembled in Parliament, and the good People of England;' she said, 'That was a lie, not half, nor a quarter of the People of England; that Oliver Cromwell was a Traitor;' then you took upon you to command the soldiers to fire at her, and accordingly they levelled the muzzles of their muskets towards her.

*Axtell.* My lord, as to that particular concerning Oliver Cromwell, or any other words concerning the Court, I understand them not; but if any interruption was made, to preserve the peace, to desire a woman to hold her tongue is no Treason. To the next particular, wherein col. Huncks saith, at a door of a certain lodging where Ireton and Harrison were in bed together, he saith that upon his refusal to sign the warrant for executing the king, I said to him, 'Col. Huncks, I am ashamed of you, the ship is now coming into harbour, and will you strike sail before we come to anchor?' Truly my lord, I think all that amounts to nothing; if it were so, which I deny it, for to bring the ship into harbour, what is that? There is no person named, fact named, nor design named; and I appeal to my conscience, I remember

not the time, place, person or words; and I can call for col. Phayre and col. Hacker, who were there; for I desire things may appear right, I desire they two persons may be called for their evidence in that point.

*L. C. Baron.* They both are in the same condition, col. Hacker in the prison behind you, col. Phayre in the Tower; Mr. Axtell, you know the strength of one affirmative witness; 'I saw such a man, and heard such a man say,' &c. is more than if twenty should witness they stood by, but did not see him, or hear him speak.

*Axtell.* My lord, he saith only this, I saw you at the door going into Ireton's chamber, and said, 'Will you strike sail, &c.?' Truly, my lord, he doth not say what, or how, any thing I meant; there must be according to sir Edward Coke's 7th book of his Institutes, that oracle of the law, he saith, 'That evidence ought to be as clear as the sun at noon-day;' all that you can say is this, it must be a wide inference, a large inference; I conceive there is nothing in these two witnesses, and if the two prisoners were here they would clear me in this.

*L. C. Baron.* If by the law you could have had them, you should; but I fear if they could be admitted they would not be to your advantage.

*Axtell.* Then, my lord, in the next place, col. Temple is pleased to say, that the lady Fairfax saying something against the Court, (which in truth, as I said before, I know not who it was, or what the words were) he saith, I bid fire against them; I did nothing but what I was commanded upon pain of death to preserve peace, and in pursuance of that command, from the superior officers of the army, silence was required, and that was all that was done. I suppose where a man is commanded to keep silence, as the sheriff is required to keep all at peace in a Court, if he restrain a person that will not be quiet, it is not Treason in him, nor in me, in this particular. My lord, in the next place, Mr. Temple is pleased to say, that I stood upon the pavement laughing, while others sighed; truly, my lord, I know not whether I saw the gentleman, or no; certainly smiling is no Treason, if I did so, though I believe I had as great a sense that day as many other persons there: this is the sum of that he saith, only he further adds that I bid the soldiers cry for Justice: truly, my lord, —

*L. C. Baron.* Because it may be your notes are short, I will acquaint you there was a little more in it: he said, you bid the soldiers cry out 'Justice, Justice;' and they coming not very readily to it, you struck some of them, till they with yourself cried out 'Justice, Justice;' till they with yourself did it.

*Axtell.* My lord, to that I answer, that in the hall there was some kind of people did set up a crying some kind of words, and may be some of the soldiers might cry so too: I might command them to hold their tongues, and to say, 'I'll teach you to cry Justice,' and so the

gentleman standing by might believe I was the person that bid them do it: Truly, my lord, this is all that the gentleman says, which I humbly conceive is nothing, because he does not say against any person; and therefore, my lord, I do hold to that maxim in the law, as sir Edward Coke holds, (that man of great parts, of learning and knowledge,) 'That in matters of Treason, wherein a man is the highest concerned in his life and posterity, there ought not to be construed against him inferences or presumptions, or strains of wit: there is no more in this, and this is all that I say in this particular. In the next place, Mr. Temple is pleased to say, that after the Court had sentenced his majesty, he was hurried away in a sedan: truly, whether he was, or not, I know not; there was a guard of halberts, whereof col. Huncks was one, and several others, as I have heard: they were select guards of his majesty, guarding him from St. James's to other places; how he came to be hurried, I know not, it was not by me: and whereas he says during the whole trial I was there, truly I think I was there by command of my General, by authority of the Lords and Commons.

*L. C. Baron.* You speak this that the jury may understand you did it by command of your general. Do you mean by express command?

*Axtell.* I did not move a day but by special command.

*L. C. Baron.* By whom?

*Axtell.* The lord Fairfax gave his orders every morning to his adjutant-general, or major general, and they issued them out to such and such persons as he appoints.

*L. C. Baron.* Who gave these orders out?

*Axtell.* The lord Fairfax; we did all under him.

*L. C. Baron.* You had not the order immediately from him?

*Axtell.* The major-general had.

*L. C. Baron.* What major-general gave you that order?

*Axtell.* There was Cromwell and Ireton.

*L. C. Baron.* The lord Fairfax gave you no immediate commission.

*Axtell.* He gave my superior officers.

*L. C. Baron.* How do you know that?

*Axtell.* My lord, because they told me so, it was by his command.

*L. C. Baron.* The question is now understood.

*Axtell.* The next person that speaks is Mr. Bodurdoe, and he says that I commanded the soldiers at the king's trial; and that a lady that was speaking was commanded silence, to this purpose; truly, my lord, this is but the same as before.

*L. C. Baron.* You said shoot too.

*Axtell.* No, (my lord,) I said not any such word, or any thing like it; I heard there was an officer went up and intreated her to be silent; I say, it is the same with the former, it is no treason to desire one to be silent. My lord, the next witness that speaks in evidence against me is Mr. Young; he says this, I bid

the soldiers cry for justice; it is very like that person, as well as Mr. Temple, might see me in the croud speaking to make the soldiers quiet, I might repeat the words that the people said, repeat the word justice, or some such word, as the people's words.

*L. C. Baron.* Remember how he repeats them; he saw you active in setting on the soldiers to cry justice.

*Axtell.* If I have taken them right; one says he heard me say such words as justice; and that he saw me strike two or three soldiers; if in the tumult such a word should be started, I hearing of them, I might strike those soldiers that said Justice, Justice, and might repeat the words, I will give you Justice, and so strike them; that is a good evidence that it might be a repetition of their words, and not any of mine own: they both speak as to the word Justice, but here was not Justice mentioned to any person: I might repeat their own words, and chastise them for those words; besides this, (though I do not say the word was spoken by me) if the word Justice had been spoken, my lord, I hope it is no treason to say, I desire justice; it is God's great attribute, it is God's ordinance, and that can be no treason. I have read in law-books, (though but lately) and I cannot find that the word justice should be made treason; then there is no person to whom that adjunct doth belong. The next evidence my lord, is captain Jenoar, he saith I commanded a guard; truly several regiments took their turns as they were commanded by the general, and I, as an inferior officer, was there; but that is no more than what was said before, it was done by the authority of the general; if I had not done it, I had died by the law of war: he saith, there was a cry for justice; I can say nothing more than I have formerly said; it may be in the tumult the soldiers might say so, and I chastising of them, and repeating that in my chastisement, they might think they were mine own words.

*L. C. Baron.* Mr. Axtell, I would help your memory; he swears the last day you encouraged the soldiers to cry, Execution, Execution.

*Axtell.* For that particular I am coming to it, (I thank your lordship for helping me;) my lord, for that of execution, truly I cannot say whether I was there that day or no; one day I was commanded to be there with some companies in Westminster-Hall, but whether I was there any more than that one time is the question: admit I was there that day, I was never there but when I was commanded; when the colonel that commanded the regiment was there, I, as an inferior officer, ought to be there; I was there by a special order, and not by a voluntary act of mine own, and so it cannot be compassing the death of the king. For as to the word Execution, what can be the sense of this word? Execution is a single word; those people that started the word Justice might put it in the heads of the soldiers; which I might strike to command silence; they like-

wise might upon the same account cry out Execution, and so to hinder all tumults, and hubbubs, and the like, in the place; I might repeat their words in correcting of them for it, I might say, I will Justice you, I will Execution you; but, my lord, this word Execution of Justice, it is a glorious word: not that there can be an inference that what they did I should say was justice, or to approve of any thing that they did, but only in general Execution of Justice, which, my lord, relates not to any person; possibly the rude people might be speaking (as hath been said before) in that manner, and the soldiers might take it up, and I might reprove them, and make use of their own words by way of repetition, I will Justice you, I will Execution you.—My lord, in the next place I do desire to speak to that of Mr. Burden; he did observe to your lordships and the jury, my country-men, my brethren, with whom are the issues of life and death, for whose life they must answer before the Lord as to righteousness, judgment, and equity; I say, my lord, as to Mr. Burden, he tells you, that for my sake he was imprisoned; saith he, 'I have suffered much by him;' and speaks it with much indignation of spirit; 'I have suffered, and been imprisoned by him,' and afterwards he comes to speak his evidence; how much his evidence may be of force I desire, my lord, the jury may consider of that; and then he comes and saith, I commanded a guard at the Banqueting house in White-Hall. Truly, my lord, the lord Fairfax commanded a regiment to quarter there, and I, as an inferior officer, might be there. In the next place, my lord, he saith, I sent Elisha Axtell to fetch the hangman; truly, my lord, I wonder this person is not come from Ireland; (if this were so,) the authority there would not send that person with his great evidence, as well as this person; he may as well charge any person with this as me: it is evident, Ireton, Harison, and Cromwell, they did all amongst themselves; I never was with them, amongst them, received no command from them, nor obeyed them; nor did any thing but what I had command for from the general, whom, by the law, I was bound to obey as a soldier. I shall only observe one thing more; this person being so long a prisoner, to extricate himself out of his imprisonment and chains, poor man! he may say more than is true. I wonder he should say I sent for the executioner; I never knew of any circumstance touching consultation about his death, or took him prisoner. When they sent to me to be one of his guard, I never would go; I humbly conceive there is nothing sticks upon me in this, considering the circumstances, and the words of the person that spoke them.—My lord, the next person that speaks against me is Mr. Cook, he saith he heard me say, 'Thrust that lady down that made a disturbance in the Court,' or words to that purpose; it is probable there might be a desire of silence. The next evidence is lieutenant colonel Nelson, he saith, that upon a discourse—

VOL. V.

*L. C. Baron.* I would put you in remembrance, lest you should forget what sir Purbeck Temple said, that by leave of persons under your command he saw the body of the king. It is only a circumstance.

*Axtell.* I have heard there were chirurgeons, physicians and halberteers, appointed by whom I know not; they had the care of such things, and had the keeping of him; he was locked up by them; no body could come in but by them; I never had a key; possibly colonel Temple might come to me, quartering there, and desire me to speak to some persons that had the charge of it to let him in; whether I did or no I cannot remember; but if it were so, I hope it will not amount to treason. The last thing given in evidence against me is by Mr. Nelson, he saith, that upon some discourse between us, he was asking what person cut off the king's head, and that I should say Hewlet, &c. Truly, my lord, I was never privy; and I appeal to Mr. Rushworth, if he were here, who was secretary, if ever he saw me in any counsel, to advise, or act, or any thing in that kind, in relation to the king's trial, sentence, or execution; for me to know the person that was employed about the execution it is strange, when (as I said before) they did all within themselves. I had no knowledge thereof, and meddled not with any thing but within my own sphere as a soldier under my lord Fairfax, by authority of parliament. For naming any person, truly, my lord, it would be a wonder to me that I should name any person to go to do any person that wrong and injury, to say he was the person; I must invent it, for I knew nothing of it. But by common fame up and down the city it was said to be another person, but who it was I cannot say, my lord; but to all this that hath been said against me, there are but two things upon two witnesses that are placed upon me; the first, my lord, here is two witnesses for crying Justice, and Execution.

*L. C. Baron.* I think you have more than two to those words.

*Axtell.* Not for both together.

*L. C. Baron.* No, but several for Justice.

*Axtell.* There is three to that; I shall only say this to your lordship, and this jury, in whose hand this life of mine is, and is committed to them, either to acquit or condemn me; and God knows the hearts of all men, and my innocency and integrity; I shall say nothing to the witnesses, it is a day of temptation; and I desire the jury, my countrymen, my fellow-citizens, and my brethren, that they would well consider of it, the word Execution and Justice; admit I had said them, (which, my lord, I do not, I must not grant) there being an uproar of people, there such words might be used, and possibly soldiers might take them up from them, and chastising the soldiers I might repeat the words, I will Justice, I will Execution you.

*L. C. Baron.* The evidence is, that you beat them because they did not readily cry Justice, Justice.

4 F

*Axtell.* It might be more probable I beat them because they did do it, I might chastise them for doing of it, and repent it as a reason for their chastisement; and but admitting it was true, which I grant not, yet I hope Justice, an Execution of Justice, as it is so great an attribute of God, by God's laws, or man's laws, is no where made treason, but mercy attends it, and judgment attends the contrary; I leave it upon the consciences of the Jury to weigh it carefully, how I should be guilty of compassing and imagining the death of the late king, when nothing is charged against me to be either of counsel, sentencing or signing, or to be at the execution; only one man, as I told you before, he spoke something wrathfully, and that he had suffered much, and therefore he is come over now, and saith I should send for the executioner, which I never knew of, or had any hand in sending for; how much validity that hath, I leave to the Jury; if it were so, it is not treason; for words may make a heretic, not a traitor; I speak that by way of pence; I do humbly conceive that these being only noted words, Execution and Justice, the king not so much as named, or any thing done to it by me, I say, I conceive it doth not amount to treason by the law; and besides, it is against the law of the great Judge, the Judge of Judges; all of us that are now, and are to come, shall stand before him to receive our deserts; I say it is against the law of God to make me an offender for a word. I have heard the Judges say, that the laws of England are grounded upon the laws of God, and the laws of England are laws of mercy, not of rigour: My lord, if a man shall be destroyed in his life, in his posterity, for a word, (admit the thing had been so) I leave upon the consciences of my Jury, before the presence of Jesus Christ, and before whom they and I must come to be re-judged again at the tribunal; and besides it is only words, and words uncertain; and sir Edward Coke saith, he must declare plain truth in matter of treason; nothing must be taken for evidence that may be a presumption or inference, or strain of wit; I hope upon this consideration that the word Justice, fixed upon me by two witnesses, may be taken up at second or third hand from the people or soldiers, by chastising them for the tumult. Then, my lord, in the next place, these words were never put in writing, and so not treason; then, my lord, there was never an overt-act done by me; for that act of indemnity that his Majesty and both Houses of Parliament passed, wherein they were pleased the very last to except me, I wondered when I came to be excepted of that number. I do come back to the place where I left, and that is the overt-act. My lord, I would only bring it in this place; when I was excepted by the House of Commons, one of the twenty, I was excepted thus, not extending to life; I went up and down free at noon day; I did not hide myself; engaging a person that was one of his Majesty's servants

to do me a courtesy, he promised me he would do it, and contrary to his promise, he was pleased to bring the king's warrant to carry me to the Tower; and after that I came to be excepted with that black catalogue of excepted persons, and to be brought to the trial of the law. Now (my lord) I return to that overt-act, as it was but words uncertain, and they may be words repeated from the third or the fourth hand, for they were not put in writing, according to that act of indemnity, which I understand the meaning of to be thus; that for their execrable treasons in sentencing, signing, or otherwise instrumental, they were excepted out of this act, and to be tried according to the laws of this nation. I understand that to be instrumental, to be instrumentally the executioner of the king; I never had any hand in that. Upon the whole, this is the fact that is proved by two witnesses; they heard me say, Justice and Execution, which must relate to the Execution of Justice, which by the law of God is not treason, especially when there was not the word King; for a word, to take away, and destroy so many, my life, wife, children, and many fatherless that are under the charge of the prisoner at the bar, is very sad; the words I do not grant, but upon such probabilities as I have said I might repeat them, I will Justice you, I will Execution you; and then the words were not written; I say as sir Edward Coke said, 'They may make a heretic, but not a traitor.' The other part of the evidence is this, that I was there with soldiers at Westminster-hall; I must say, if that be treason to be guided by the judgment of Lords and Commons in Parliament, I must say, if that be treason to take up arms for a Parliament upon such grounds and expositions of the statute which they have made and published by their own authority, if I am guilty under the general, then the Parliament would be guilty of treason.

*L. C. Baron.* That you have spoke to—I am loth to interrupt you.

*Axtell.* I thank your lordship for informing me, but I was commanded to be there by my general; if I had not gone I must have died; I did only stand there for preservation of the peace, in no other sense; if the general order me to be at such a rendezvous, I must be there; if I had disobeyed he would have condemned me by the law of war. The next thing against me material are these two things, that is, that I should send one Elisha Axtell for the executioner; I must say it is most admirable such things should be laid to my charge; I hope your lordships and the Jury do observe, he told you, he suffered much, and a poor man, under his extremities, and losses, and sufferings, perhaps might start some unadvised words, and being now sent over, may ascertain it. But doubtless this Elisha Axtell being in Ireland, if by command it had been so, would have been sent over; truly I must say, I had no hand in the business; it was left wholly to them amongst themselves, and what-

ever was done, or whatever was said, it was said and done by them; I never was acquainted with any thing of that nature. He said he heard I should send Elisha Axtell for an executioner; if hear-says may be treason it will be a hard lesson; and, my lord, sir Edward Coke saith, there, must be two witnesses, here is but one. It comes from such a man, my lord, as the providence of God—but I will say no more as to that, but pray the Jury will take notice of it.

*L. C. Baron.* You need not doubt of it, it shall be taken notice of, this of Burden.

*Axtell.* Now, my lord, I have but two or three words more, the statute of the 25 Edw. 3., it doth intend private persons, my lord, here is my commission.

*L. C. Baron.* It is owned you had it from your general.

*Axtell.* My lord, his Majesty is pleased to say in his gracious Letter, 'We do by these presents declare, That we do grant a free and general pardon to all our subjects, of what degree or quality whatsoever, who within four days after the publishing hereof shall lay hold upon this our grace and favour, excepting only such persons as shall hereafter be accepted by parliament;' that is, a parliament called by his own writ. You know this parliament—

*L. C. Baron.* Mr. Axtell, I would not interrupt you to that, but this very objection was made by one of the prisoners before; this answer was given, first, the king's declaration is not a pardon in point of law, it must be under the broad seal, but God forbid it should bind in honour. You instanced in the word parliament, what was meant by the word parliament: You must know this, the exigency of the times were such, that there were many noble persons that took the advantage to assemble themselves together to reinstate the king; they did that which was just and lawful, according to the exigency of the times; this declaration he sent to the two houses, he called them his two houses, so that it appears clearly and manifestly they were then sitting, they being accepted by the king, and owned by him; and they did sit in the way of convention, according as a parliament, and his majesty sent his letter to them; and these are the persons that have thought fit to except you out of that act.

*Axtell.* My lord, may I speak to that any further?

*L. C. Baron.* If you do, it will be overruled.

*Axtell.* I submit—with submission to the providence of God; I did apply to sir Harbottle Grimstone for the mercy and favour of his majesty, according to his declaration, and here is sir Harbottle's own hand for a certificate.

*L. C. Baron.* This is allowed you, that you did claim that benefit within the time, but you may remember that it was referred to those two houses of parliament, they were to con-

sider who was fit for the pardon, and you are by them excepted out by name: Your question now is no more, but whether Guilty? or Not Guilty? And these are but extravagant discourses that you say otherwise, and rather do you harm than good.

*Axtell.* I hope you will pardon me, my lord; I hope I have spoken to clear the point, the fact charged by your lordship, and before the jury; and I hope the Lord will give the jury a memory of it, and a right understanding in what I have said for my own defence. My lord, the next thing I have to offer, is, this, to expound that act of parliament, that it was the intention of his majesty and parliament that all should be excepted, but those guilty of counselling, signing, or sentencing. Truly, my lord, I humbly conceive, I being none of those, am not Guilty of treason. I shall only speak one word to my jury, that they will remember what I have said, that there is but two things, two witnesses, as to justice and execution; that it relates to no person, but in general: and then I do not own the things, but possibly they might hear such words, I taking of them up upon a rebound, reproved the soldiers; for the other, that I should send one for the executioner, (he heard so,) and that I should name who was the executioner, I would not have that person, or any other, to suffer for that.

*L. C. Baron.* This is not at all pressed upon you, not as to any charge.

*Axtell.* I thank your lordship. I am very ignorant.

*L. C. Baron.* Have you done, sir?

*Axtell.* I leave the matter to the jury, in whose hands I, and my little ones, and family, are left: I only say this to you, remember your ancestors, remember your posterity. I never heard it before that words were treason. In queen Mary's time Throckmorton was acquitted for words by the jury.\* Gentlemen of the jury, I leave my case, my life, my all, in your hands.

*L. C. Baron.* Gentlemen of the jury, there have been several things offered by the prisoner at the bar, so near as my memory will give me leave in so long a discourse, I shall repeat all things which he saith for himself, and which are said against him. There are some things that he seems to utter as tending to matter of law, and something merely of fact, proper only for you of the jury. For matter of law, he hath urged several things for himself; not by way of justification of the fact (I must do him that right), but in excuse of himself; and I hope his conscience hath so wrought upon him, that he is of opinion the fact is a horrid fact, which was so indeed. For that which he hath said for himself, first, he doth alledge to have his commission from the lord Fairfax, my lord Fairfax had his commission from the two houses of parliament, and this gentleman's was in March, the beginning of the year 1648. He

\* See No. 52, vol. 1, p. 369.

saith, what he did was in obedience to his superiors, as a soldier, that he never consulted or advised about any thing of the trial or execution of his majesty. For this point, it hath already been spoken to, gentlemen; for that which hath been spoken to at large hitherto I must repeat it here, that he may know it, that no person whatsoever, no community, not the people, either collectively or representatively, have any coercive power over the king; neither the lord Fairfax, his general, nor he, nor any other person, could be excused for this horrid fact of bringing the king to trial, no person, as I said before, nor community, have any such power. The law-books which he hath lately seen, (and truly he hath employed his time well in that,) the law-books tell us, that whereas the two Spencers<sup>a</sup> had broached a damnable and detestable principle, that the homage was only due to the king, in respect to his crown; that if he did not demean himself according to such and such rules, his subjects might rule him *per asperitatem*, by asperity and sharpness; but this was condemned by two acts of parliament; they both appear in my lord Coke, in Calvin's Case. I do not go to repeat all the evidence that might clear this truth; I say, had there been any such thing, but it hath been told him there was no such thing in fact. My lord Fairfax's commission was for the preservation of the king, as well as for the liberties of the people. The 11th of Richard 2, Robert de Vere, and others, for levying a war, was punished, but this gentleman was not charged for levying of war. If either of the houses of parliament should command such a thing as tends to the death of the king, it would be void in itself. Something he let fall of the parliament not being dissolved. My masters, for that you have heard some of my lords declare how, and in what manner, this was an authority of parliament, but it was clearly nothing at all; this gentleman goes by virtue of a power from the lord Fairfax. The next thing he urges in point of law was this, he comes by way of dilemma; saith he, either I must obey my general, or die by the law of war. He goes further, and urges the statute of 11 Henry 7. He comes further, and saith, in the 25th Edward 3, that concerns single persons, ~~and~~ it concerns every man. The Indictment, you see now it is laid, it is for imagining and compassing the death of the king. The overt-acts in the Indictment, you have heard what they are; there must be more than one witness for treason. It is very true; but if one person prove one thing, another person another; if one swear he did cry, Justice, Justice, Execution, Execution, and another swear some other part, gentlemen, this was here before delivered to you for an overt-act. It is any thing that opens and makes it appear to the jury that he did do the things for which he is indicted; I say, any one of these, that they did meet together, and did consult in order

<sup>a</sup> See their Case *ante*, No. 4, vol. 1. p. 23.

to the putting the king to death. That they did meet in a traitorous assembly about the king's death, I shall say no more: you need not, I think, go from the bar.

[The Jury go together, and after a little consultation among themselves, they returned to their places.]

*Clerk of the Crown.* Gentlemen of the Jury, are you agreed of your verdict?

*Jury.* Yes.

*Clerk.* Who shall say for you?

*Jury.* Our foreman.

*Clerk.* Daniel Axtell, hold up thy hand. Gentlemen, look upon the prisoner at the bar. How say you, is he Guilty of High Treason whereof he stands indicted and hath been arraigned, or Not Guilty?

*Foreman.* Guilty.

*Clerk.* Look to him, keeper. What goods and chattles?

*Jury.* None to our knowledge.\*

#### TRIAL OF COLONEL HACKER.

October 15, 1660.

*Clerk of the Crown.* Set Francis Hacker to the bar.† [Which was done accordingly.]

\* See particulars of his Behaviour and Execution, *infra*.

† "Colonel Francis Hacker being appointed to appear also in this tragical scene, he was brought to the bar; where an indictment for compassing and imagining the death of the king was read against him: and to prove the accusation, witnesses were produced; who deposed, That he was one of the persons that were upon the guard, and kept the king prisoner; that the warrant for seeing the sentence that had been pronounced by the high court of justice put in execution, was directed to him with others; that, in prosecution of that commission, he had signed a warrant for executing the king; and that he took the king, by virtue of the warrant he had received, out of the custody of colonel Tomlinson, and conducted him to the scaffold on which he had been put to death. Colonel Hacker excepted not against any of the jury, finding all of them to be of the same stamp; and said little more in his defence, than that he had acted by the command of his superiors, and that he had always endeavoured to serve his country in all his public actions. So that his trial was quickly dispatched, and he declared guilty of high treason. He was a gentleman of a considerable estate, derived to him from his ancestors, who lived in the county of Leicester. He had passed through several degrees of command in the service of the parliament; and particularly distinguished himself at the battle of Worcester, in the head of a regiment of horse, which he had raised on that occasion for the defence of his country. He refused his assistance to support the usurpation of Mr. Richard Cromwell, though he had forced

*Clerk.* Francis Hacker, hold up thy hand. These men that were last called are to pass upon you, &c. If you will challenge all, or any of them, you must challenge them when they come to the book before they are sworn.

*L. C. Baron.* You may challenge 35 peremptorily, but no more.

*Hacker.* My lord, I shall challenge none.

Tho. Bide, Robert Sheppard, William Dod, sir Tho. Allein, sir Hen. Wroth, Tho. Morris, Ralph Halsal, John Gallard, John Nichol, Tho. Ufinan, Tho. Nicol, Christopher Adby, in all twelve. The Jury called and sworn.

*Clerk of the Crown.* Make Proclamation. If any man can inform my Lords the King's Justices, &c.

*Clerk.* Francis Hacker, hold up thy hand. Look upon the prisoner, you that are sworn of this Jury. You shall understand that Francis Hacker, prisoner at the bar, stands indicted, &c.

*Mr. Serjeant Keeling.* My Lords, and Gentlemen of this Jury, Francis Hacker, the prisoner at the bar, stands indicted, amongst others, for compassing and imagining the death of the late King Charles the First, of happy memory. The compassing and imagining is the treason itself; the other points, as convening, assembling, meeting together, and the actual villainy that followed all these, are but as evidences of that imagination. As to this person at the bar, our evidence will be thus: we shall make it appear to you that he was one of the persons that were upon the guard, and kept the king a prisoner, that he might be sure to be brought to that Mock Court of Injustice. Then it will appear to you that this prisoner at the bar was highly trusted by all those miscreants that thirsted for the king's blood, by their bloody warrant directed to him and others, to take the king's person into custody, and to see execution done. This was the person that kept him till he brought him to that fatal stage. That this warrant was lately brought from his own house by his own wife to the House of Lords. And then we shall shew you that this person set his hand to the warrant to the executioner for execution. That he did not do it ignorantly nor unwillingly, for he heard the warrant read. We shall make it appear that he was upon the scaffold, and had the axe in his hand.

*Counsel.* Crier, call Holland Simpson, co-a knighthood, as it is called, upon him, and presented him with two swords; refusing to obey his orders, and joining with the common-wealth-party in his deposition. He had continued in the command of his regiment till he was taken in custody; having had assurances from Monk, that he should be fully indemnified. So that when he came to London, he made a visit to Monk, and was received with all the appearances of friendship and affection. But the next day after he had been thus caressed, he was seized, examined, and sent to the Tower." 3 Ludlow, 72.

lonel Tomlinson, Mr. Nunnally, Mr. Nutley, Hercules Hunks, and Benj. Francis: who were all sworn as witnesses.

*Counsel.* Mr. Simpson, speak your knowledge of the employment of the prisoner, touching the trial and execution of the king.

*Hacker.* My Lords, I will confess what I know in this case, to save your lordships the trouble. I confess I was upon the guard, and had a warrant to keep the king for his execution. [The Warrant being shewn to the prisoner, he confessed that to be the warrant.]

*Counsel.* After you had that warrant brought to you, did you by virtue of that direct another warrant for execution of the king? Did you not take the king (then prisoner) from the custody of colonel Tomlinson?

*Hacker.* No, Sir.

*Counsel.* We shall prove it; [the Warrant was read.] 'At the High Court of Justice for Trial, &c.' My Lord, at the time that this warrant was signed, the person of the king was in the custody of colonel Tomlinson; Did not you take and demand from colonel Tomlinson the person of the king, as soon as you received that warrant?

*Hacker.* No, Sir, I demanded him not.

*Counsel.* Colonel Tomlinson, tell my Lords the manner of that business.

*Tomlinson.* My Lords and Gentlemen of this Jury, I shall, as my memory enables me, make a faithful narrative of this business: I had indeed to do with the guard that had to do with the person of the king about St. James's. Being then an officer of the army, a colonel of horse, when the king came to St. James's, it was observed by some that there was too great an access of people admitted to the king; and within one day or two after, there was a party of halberteers appointed, for the stricter observing the guard; they were commanded by three gentlemen, of whom this prisoner at the bar was one; the orders every day for removing the person of the king were commonly directed to four persons, and those were myself, lieut. col. Cobbet, captain Merryman, and one more; but the guards that still went along were the halberteers. So that every day when the king did go to Westminster, he went to sir Robert Cotton's house, and so far I went with him, and no further; I never went with him, nor saw him, at that pretended High-Court of Justice. When he used to go to the High-Court of Justice, commonly (every time indeed) the serjeant Dendy (as I remember his name was), he used to come and demand that the king should go to the High Court of Justice, and colonel Hacker did ordinarily go with him, with the halberteers. It was my custom to stay in the room till he came back again; these orders continued during the time of his trial. After the sentence was given, on the day whereon the execution was to be done, it was ordered, (which order may be produced, if significant) that the guards that were for the security of the person of the king should cease,

when a warrant from the High Court of Justice should be produced: I would not omit any thing that I well remember; and thus I remember, that the night before the execution, the king called me into his chamber, and told me several things; I will take the occasion to trouble you with a short discourse of it: He told me of some legacies he had given; he told me he had prepared something that he would speak the next day; and in the close of it, he desired me that I would not leave him; (for I speak it in truth), there were many times several incivilities offered to him; and though I was upon a duty that was of a harsh and displeasing nature to me, and did desire several times to be released from it, (as I believe it is well known to some), yet I did not admit any time that any incivility should be offered to him; people would take tobacco before him, and keep their hats on before him, I always checked them for it; he was pleased to have a consideration of that care that I had in that capacity I then stood. That very night before his death he was pleased to give me a legacy, which was a gold tooth-picker and case that he kept in his pocket. The next day, when the warrant came, the guard of halberteers went with him through St. James's Park, I was present, walking near the king, the bishop of London (now of Canterbury) was with him, and some others. As we were going through the Park, he was pleased to discourse something of what he had been discoursing before, touching his burial; he wished that the duke of Richmond, and some others that he should bring, should take care of it. That morning, in the Park, he told me he had been thinking of what he had said the night before. He told me he had some thoughts that his son might come to bury him, and desired he might not suddenly be buried; I gave him assurance I would communicate his desire, and so I did: When he came to Whitehall, he went into a room in the gallery, (I know not the name,) the guard stood in the outer room there. There was a gentleman that came to me there, and told me he was endeavouring to present a letter from the prince to the king, and told me he could not get an opportunity; I said he should not want an opportunity, if I could help him; it was Mr. Henry Seymour; it was delivered, and the king read it, and he gave several things in charge to Mr. Seymour, to acquaint the prince with, and was pleased to mention to him something of civility that I had shewn him in his imprisonment; the effect and fruit of it I find, and do most humbly acknowledge before all the world my thanks to his most gracious majesty the king, and to the Lords and Commons. After Mr. Seymour was gone from him, (I do not well remember the time, whether it was twelve, one, or two o'clock,) col. Hacker came in, and there was present with him the two other gentlemen that were named in the warrant, as I remember, I am sure col. Hacker, if my memory fail me not, did produce the warrant. Myself, and those gentlemen

that were concerned in the former orders, looked upon this warrant, by which the orders which we had were at an end. I must confess I did not, nor none of those did tell him, that the orders for security of his person were at an end; but col. Hacker did go in to him, and after a little while col. Hacker comes to the door, and the king was coming forth, and he told me that the king desired I should go along with him: and indeed the night before, when the king told me that he had prepared something to speak, he desired I would not leave him. So col. Hacker led him forth, the bishop of London followed him, and I followed the bishop of London: the guards were prepared without, and they went on to the scaffold; when we came to the scaffold, I went so far as to the entrance upon it; the king was upon it, and had looked a little while about it, and was thinking to have spoken over, but he turned about to me, and began to direct his speech to me. I cannot trouble you with what the king said, for I cannot remember it: but that col. Hacker was there in prosecution of that warrant, and upon that warrant our orders were at an end, I do aver.

*Counsel.* You delivered him upon that warrant, did you?

*Tomlinson.* He went and received the king upon that warrant: it was a chamber that was known then by the name of the Horn-Chamber, and there the king was in the inner room: this is the substance of all.

*Counsel.* We will trouble you with one or two witnesses more.

*Counsel.* Mr. Tomlinson, did Mr. Hacker, or his soldiers, take tobacco to the offence of the king?

*Tomlinson.* I do not say that any tobacco was taken there by Mr. Hacker: but the soldiers would be stepping in, and take tobacco at his chamber in St. James's, and committed other incivilities.

*Counsel.* We have proved that the prisoner did demand, and had the person of the king: Now we will prove to you that himself had the boldness to make a warrant in pursuance of the former, for the execution of the king.

*Counsel.* Crier, call Mr. Huncks. [He being sworn, said.]

*Huncks.* My lords, and gentlemen of the Jury, that day the king died, a little before the hour he died, I was in Ireton's chamber, where Ireton and Harrison were in bed together, there was Cromwell, col. Hacker, lieutenant col. Playre, Axtell, and myself: standing at the door: this warrant for the execution was there produced, and you [looking upon Mr. Hacker at the bar,] were reading of it, but Cromwell addressed himself to me, commanding me, by virtue of that warrant, to draw up an order for the Executioner: I refused it, and upon refusing of it there happened some cross passages. Cromwell would have no delay. There was a little table that stood by the door, and pen, ink, and paper being there, Cromwell stepped and writ. (I conceive he



wrote that which he would have had me to write:) As soon as he had done writing, he gives the pen over to Hacker; Hacker, he stoops and did write, (I cannot say what he writ,) away goes Cromwell, and then Axtell; we all went out; afterwards they went into another room.

*Counsel.* What followed?

*Huncks.* Immediately the king came out, and was murdered.

*Mr. Secretary Morrice.* Mr. Huncks, you did tell us in the Tower, (when we were sent by his majesty's council to examine you, and others there,) that col. Hacker did then sign that warrant for nominating and appointing the execution.

*Huncks.* My lord, Cromwell comes to me, and bids me write a warrant for that purpose: I refusing of it, Cromwell writes himself, and Hacker writing on the same paper, what should I conceive but that it was the warrant? (the king presently after coming to the Scaffold).

*Counsel.* Did Cromwell give you no bad names because you would not write that order? Did not he say you were a coward?

*Huncks.* He said I was a froward, peevish fellow.

*Counsel.* Did Hacker only write his name, or give directions in the drawing up of the order?

*Huncks.* I conceive he only writ his name.

*Counsel.* My lord, we have only that eye-witness.

*Huncks.* Hacker confessed to the gentleman jailor of the Tower, that if he did do it he did it by order.

*Mr. Secretary Morrice* and the Lord *Annesley*, sworn\*.

*Counsel.* Mr. Secretary, we desire you would be pleased to tell my lords what col. Hacker the prisoner at the bar did confess to you, and others touching this business.

*Mr. Secretary.* When col. Huncks (for that title he now assumes,) was brought over out of Ireland, and committed to the Tower of London, there was three of the council, by order of the board, sent to examine him, sir Anthony Ashly-Cooper, Mr. Annesley, and myself: In obedience to that order we repaired to the Tower, and had col. Huncks brought before us; we told him, that he (being one of those which were appointed by warrant from the

supposititious High Court of Justice to carry on the execution of the king, and see it done,) must needs know who was the Executioner: Whereunto he answered, that he, for his part, did not know who was the Executioner, for the warrant whereby the Executioner was nominated and appointed was refused to be signed by him, but col. Hacker signed it, and therefore col. Hacker must know it. Accordingly, upon our return, we made our report to the board, and upon this there was an order that col. Hacker should be sent for, taken into custody, and brought before the lords of the council: Accordingly he was apprehended, and the same three counsellors were sent down to examine him. We took him into a private room, and examined him, and told him, (amongst other things,) that he being the man that (as we are informed,) did sign the warrant for the nominating and appointing the Executioner, doubtless he must needs know who that was; at first he said he did not sign this warrant: I told him I would have him well advised what he said; for if you deny it, it will be proved by such a man, naming col. Huncks, and that you will do yourself a great prejudice if you deny that; saith he, 'I do believe I did sign the 'Warrant for appointing the Executioner;' this is all I can say.

*Lord Annesley.* Gentlemen of the jury, it is very true as you have been told already, that I was amongst those that the council sent to the Tower of London, first to examine col. Huncks, and Mr. Cook, that hath been condemned, Hulet, and some other prisoners. We did examine col. Huncks, and he did by his examination acquit himself from signing that warrant that he was charged with, being one of the three appointed to see execution done; but they appointed another to sign the warrant, (col. Huncks refusing,) and upon his refusing, (as he said,) Cromwell, that urged him to it, said he was a cowardly fellow, or something to that purpose: when we examined him about the person in the frock, he said he knew nothing of that, but that col. Hacker signed that warrant for execution; this examination being reported to the council, the lords sent for Hacker. I think upon notice col. Hacker came; he had been of the army, and continued till that time an officer. When he came thither, the lords of the council having notice of it, commanded the same persons formerly appointed to go out and examine him; we had him into a little room belonging to the clerks of the council, and examined him to that point concerning the man that cut off the king's head, whether he knew any thing of it? He did affirm positively he did not know; we told him that he was the man by testimony that signed a warrant for execution of the king, and then certainly he must know the person that he appointed by his warrant; he said, if I did sign any warrant it was by command of the general; that being but hypothetical, we thought it meet to make it more positive, whereupon we asked him whether he was the

\* "Memorandum, That Secretary Morrice and Mr. Annesley, President of the Council, were both in commission for the trial of the prisoners, and sat upon the bench, but there being occasion to make use of their testimony against Hacker, one of the prisoners, they both came off from the bench, and were sworn, and gave evidence, and did not go up to the bench again during that man's trial: and agreed by the Court they were good witnesses, though in commission, and might be made use of." Keeling, p. 12.

man that signed the warrant, or no? Thereupon, (as I remember, and as the examination, which was all written with mine own hand, doth help my memory,) he did say he did believe he did sign such a warrant; thereupon he was asked further, how could it be possible that he could forget the man, if he signed the warrant; he knew who the man was that was appointed; he said for that, that he did believe the warrant was read to him, and that therein the man's name might be, but he could not now remember his name; this was the effect of his examination and confession.

*Counsel.* Mr. Francis, did you see col. Hacker, at the time of the execution, upon the scaffold?

*Francis.* Yes, I did see him as a principal commander there; I was coming out of Westminster into London, about half an hour before the king came upon the scaffold; coming near the scaffold, as soon as I was engaged in the throng, (when I had passed about eight or ten yards,) I could not pass backward nor forward; I was enforced to stand there: during that time I saw the scaffold, and the ax, and the block, taken up by divers people; and principally I saw a man that is not here, he is in custody, I saw him take it up, and try it with his thumb, and lay it down; this was James Berry, he came off, and came not upon the scaffold again, unless disguised.

*Counsel.* Did you see Hacker there? Did you see him upon the scaffold when the king came on?

*Francis.* I did see him, he was there; his majesty came to the side of the scaffold next to St. James's; he looked that way and smiled; after a while the block and ax laying down about the middle of the scaffold, there was a black cloth hung about the rails of the scaffold.

*Counsel.* We have another evidence, the prisoner hath confessed enough; but we have proved that he had the king in custody; he confessed that he believed he did sign the warrant, and that he at the time of execution was there to manage it. What do you say for yourself?

*Hacker.* Truly, my lord, I have no more to say for myself; but that I was a soldier, and under command, and what I did was by that commission you have read.

*L. C. Baron.* Can you deny any thing that Mr. Secretary and Mr. Annesley have declared?

*Hacker.* I cannot tell what I might then say, the gentlemen were very strict with me; truly I have been no counsellor, no adviser, nor abettor of it, but in obedience to the command over me I did act. My desire hath been ever for the welfare of my Country, and that civil power might stand.

*L. C. Baron.* Have you yet resolved who you gave the warrant for execution to?

*Hacker.* No, my lord, I delivered n

*L. C. Baron.* But you know who it was directed to?

*Hacker.* No indeed, my lord; he pleased

to ask col. Huncks whether I read this warrant or no.

*L. C. Baron.* This is all you have to say for yourself?

*Hacker.* Yes, my lord.

*L. C. Baron.* Then, col. Hacker, for that which you say for yourself, that you did it by command, you must understand that no power on earth could authorize such a thing, no command in such a case can excuse you. There is a twofold obedience, a passive obedience, to suffer rather than do things unlawful; and an active obedience, to do that only which is lawful; and therefore this will not excuse your obedience to those unlawful commands.—Gentlemen of the jury, you see the prisoner at the bar stands indicted for compassing and imagining the death of the late king; and there are several open acts set forth in the indictment, which tend to prove that matter; one is assembling and meeting together, another is sitting upon the king, another sentencing, and at last concludes with the murder of the king, as the consequence of all. Any thing that tends to the proving of this compassing and imagining his death in any one of these particulars, that is an evidence to you to prove the whole indictment. This gentleman was commander of halberters; col. Tomlinson saith, that though he kept the guards that were about the king's person, this gentleman, with two other persons, brought halberters, that there might not be such frequent access as formerly to the king; here is one act. He commands these halberters at that time, when the business was in agitation, before that High-Court, as they called it. You see after the sentence was given that he was one of the persons to whom the warrant for execution was directed; you see afterwards there was a consulting together, Cronwell, Ireton, Harrison, and Axtell, were in the chamber, when col. Huncks refused to sign; he prisoner signed the warrant, but knows not the person to whom it was directed: you see besides col. Tomlinson's testimony, who saith further, that when they were discharged, col. Hacker went in, and the king was brought out presently after to that fatal place. Col. Huncks swears that when the warrant was offered to him he refused it; that Hacker, the prisoner at the bar, signed a warrant, though he doth not remember the name of the person to whom; it appears by two witnesses (honourable persons) he confessed he signed it, but he did not know the person to whom directed. You see another witness, Benjamin Francis, he saith he saw Hacker upon the scaffold with the king.—He doth not deny the fact; you need go no further, it is very plain he had a hand in this business, a principal agent in it; he that brought the king to the scaffold, he that had the care in managing that business, he that signed the warrant to the executioner, either he is guilty of compassing the death of the king, or no man can be said to be guilty.

The Jury went together, and after some little consultation returned to their places.

*Clerk of the Crown.* Gentlemen of the jury, are you agreed on your verdict? *Jury.* Yes.

*Clerk.* Who shall say for you?

*Jury.* Our foreman.

*Clerk.* Francis Hacker, hold up thy hand. Gentlemen, look upon the prisoner at the bar, how say you, is he guilty of the high-treason, whereof he stands indicted, and hath been arraigned? Or Not Guilty?

*Foreman.* Guilty.

*Clerk.* Look to him, keeper.

*Clerk.* What goods and chattels, &c.

*Jury.* None that we know of.\*

### TRIAL of WILLIAM HULET.†

• October 15, 1660.

*Clerk of the Crown.* Set William Hulet to the bar, [who was brought accordingly.] William Hulet, alias Houlet, hold up thy hand. Those persons that were last called of the jury are to pass, &c. if you will challenge them, or any of them, you must challenge them when they come to the book before they be sworn.

*L. C. Baron.* Understand you have power to challenge five and thirty men, and not above; you may challenge them without cause shewn. If you have cause for any other you may challenge them also. If you will have pen, ink, and paper, you may have them.

*Hulet.* Truly, my lord, I cannot write but a very little; I shall not need them. I did not understand my Indictment well, I desire to hear it again.

*L. C. Baron.* You will hear it read again.

\**Clerk.* Sir Thomas Allen, sir Henry Worth, Tho. Bide, Robert Sheppard, Thomas Morris, Ralph Halsal, John Gallyard, John Niccol, Thomas Ufman, Christopher Abdy, William Dod, in all twelve. *Jury* called and sworn.

*Clerk of the Crown.* William Hulet, alias Houlet, hold up thy hand. You gentlemen that are sworn, look upon the prisoner.

*Clerk.* You shall understand that he stands indicted of high-treason, by the name of William Hulet, alias Houlet, late of Westminster in the county of Middlesex, gent. for that he as a false traitor, &c. [here the indictment was read, unto which indictment he hath pleaded Not Guilty, and for his trial hath put himself upon God and the country, which country you are: now your charge is to enquire, &c.]

\* See particulars of his Behaviour and Execution, *infra*.

† "Capt. William Hulet was also accused, and tried, for cutting off the king's head, or at least for being one of the persons that stood masked upon the scaffold during his execution: and though divers creditable witnesses deposed, that Gregory Bandon, who was common hangman, had confessed and owned to have executed the king; yet the jury found him guilty of the Indictment. But the Court, being sensible of the injury done to him, procured his reprieve." 3 Ludlow 73.\*

• VOL. V.

*Sir Edward Turner.* May it please your lordships, and you gentlemen that are sworn of this jury, we are now entering upon the last act in this sad tragedy of the murder of the late king; there have been before you some of the judges, the counsel, the chaplain, and the guard; this prisoner at the bar, in the last place, was one of those, which came with a frock on his body, and a vizar on his face, to do the work. The course of our evidence will be this; first, we shall prove by witnesses that saw him, and knew him, that he was thus disguised; he hath confessed that he was upon the scaffold, that he hath had several preferments; and I fear it will appear, that it was he, that gave that fatal blow; for he hath confessed he had an hundred pounds given him for his service therein; and we doubt not but to pluck off his vizar by and by. The indictment is for compassing and imagining the death of his late majesty of glorious memory; if we prove to you any circumstantial Overt-Act whereby you shall be convinced of this, you are to find him guilty.

*Richard Gittens* sworn.

*Counsel.* Mr. Gittens, tell my lord and the jury what you know concerning the prisoner at the bar.

*Gittens.* The thing is this, my lord, this gentleman at the bar and myself were both in a regiment in one company as serjeants about twelve or thirteen years together. About a day or two before the king came to the scaffold, col. Hewson did give notice to the lieutenant that we should come to him, about 38 of us, and he put us all to our oaths, that we should say nothing of what they did; he swore us to the book; after he had sworn us, he asked us if we would undertake to do such an act; if we would we should have an hundred pounds down, and preferment in the army as long as that stood, and the parliament. Afterwards we refused, every person; we thought capt. Hulet did refuse; after all refused, it seems he did undertake to do the deed. When the king was brought on the scaffold, we were in Scotland-yard, and they were upon the guard in the Banqueting-Chamber; when they were there I laid down my arms, and got into the company; capt. Webb kept the sword, with his halbert in his hand, by the scaffold, and I did bustle to come near to them; then I returned back. Hulet (as far as I can guess) when the king came on the scaffold for his execution, and said, Executioner, is the block fast? then he fell upon his knees.

*Counsel.* Who did?

*Gittens.* Hulet, to ask him forgiveness; by his speech I thought it was he; captain Atkins said, who would not undertake to do this fact? I told him I would not do it for all the city of London; no, nor I neither for all the world, saith Atkins; you shall see Hulet quickly come to preferment; and presently after he was made captain-lieutenant.

*Counsel.* Was he with his regiment that day?

4 G

*Gittens*. We could not see him with the regiment all that day; he was never absent at any time before.

*Counsel*. Did you know his voice?

*Gittens*. Yes, sir.

*Counsel*. Did you mark the proportion of his body, or his habit, what disguise he was in?

*Gittens*. He had a pair of freeze trunk breeches, and a vizor, with a grey beard; and after that time col. Hewson called him 'father grey beard,' and most of the army besides, he cannot deny it.

*Hulet*. I desire as to this witness; he doth alledge that he and I were serjeants in one company, which I deny; he was not in that company I was in; I desire to know of him how he comes to know that I was there at that time.

*Gittens*. By your voice.

*Hulet*. I will swear that this man was with the regiment under the scaffold; where were you at that time when the act was done?

*Gittens*. Where was I? By captain Webb.

*Hulet*. Where was he?

*Gittens*. At the door of the Banqueting-house.

*Hulet*. Was you on the scaffold, or no, sir?

*Gittens*. I was on the scaffold end.

*Hulet*. My lord, I desire you to consider what this person saith, that he was upon the guard in Scotland yard, and at the scaffold with capt. Webb. My lord, I desire again, whereas he said I had a grey beard, let any man besides himself say that ever I was called by that name grey-beard, throughout the regiment.

*Stammers* sworn.

*Counsel*. What have you to say concerning the prisoner at the bar?

*Stammers*. He was a captain-lieutenant to col. Hewson's troop; when I had entered myself into that troop I was a while in Dublin, and I was commanded by the prisoner at the bar, I and the rest, to march to a place called Lutterels-town, about 5 miles beyond Dublin; the prisoner at the bar came thither to us two days after; then being in his chamber he sent for me up; I went up and sat down; he examined where I had served. I told him I did formerly belong to the lord of Inchiquin; he asked me if I was ever in the king's army; with that he ~~rolls~~ rolls about the room two or three turns; saith he, I was the man that beheaded king Charles, and for doing it I had an hundred pounds, saying, I was a serjeant at that time.

*Hulet*. I desire to ask him a question; I confess—(what is your name?)

*Counsel*. Stammers, his name is Stammers.

*Hulet*. Such a one was under my command: I think I have not seen you these eight years: I desire to know when these words were spoken, and the place.

*Stammers*. I say in Lutterels town, in your own chamber, and that was nine or ten years ago.

*Hulet*. It is about eight years ago since I

left that command: Who was by at that time?

*Stammers*. No body.

*Hulet*. 'Tis strange: How long had you been in the troop before?

*Stammers*. I was in Dublin about a fortnight's time, then you sent for me, and I came to Lutterels town; the first time that I came to the troop was at Dublin, and then you came to me with two orders from Hewson, and then you did pretend you was brother to one Mr. Chambers, and then we went and quartered in Lutterels town.

*Hulet*. My lord, his examination in Ireland and this doth not agree; you did deny this before Baldwin a trooper; I desire his examination may be read (which was accordingly read, and agreed with the testimony now given). I desire he may mention what man that was, that I sent for him.

*Stammers*. I cannot tell what man.

*Hulet*. My lord, I desire that servant may be either named or produced.

*Stammers*. I cannot remember the man, it was seven years ago.

*Hulet*. Then again upon another account, as he speaks before, that I should examine him where he had been, and that he should say at the lord Inchiquin's.

Captain *Toogood* sworn.

*Toogood*. I shall first give your lordships and the jury what I have heard others say concerning the prisoner at the bar, and that is first colonel Hewson; I was in 1650, about September, in Dublin castle, about some business with Hewson; Captain Hulet, the prisoner at the bar, came into the room, he talked with col. Hewson a little while; I observed them very familiar; and I asked Hewson what he was, he told me he was his captain lieutenant of horse; I desired to know where he had him? he told me he made him so from a serjeant, and a very mettled fellow he was; it was he that did the king's business for him upon the scaffold. In 1653, there was a disbanding of the army in Ireland; this gentleman was then continued captain lieutenant in Pretty's regiment: I discoursed with Pretty concerning him, and one part of it, I remember, was about the king's death; and he did tell me that he was assured by colonel Hewson, that Hulet either cut off the king's head, or held it up, and said, 'Behold the head of a Traitor;' col. Pretty would not tell me which of the two it was; but I saw the person that did it, and methought he did resemble this person. About 12 months after I came to live near the prisoner in Ireland; once I remember at one Mr. Smith's at the White-horse in Carlow I met him there, and I was asking the prisoner at the bar the question, whether he was the man that cut off the king's head, or not? saith he, Why do you ask me this question? I told him, I had heard so by several, namely, by Hewson and Pretty; upon that he said, 'Well, what I did I will not be ashamed of; if it were to do again, I would do it.' Once since that time, about half a

year afterwards, I was in the same place, and there talking with him about the king's death; he was telling me it was true; he was one of the two persons, that were disguised upon the scaffold. I desired to know what if the king had refused to submit to the block? saith he, there were staples placed about the scaffold, and I had that about me that would have compelled him; or words to that effect; other times I have heard him speak something to this. November, the last, in the Queen's county at Maryborough, colonel Jones took upon him to be governor, and to chuse two out of a regiment that might be the rulers of the people, legislators I think they called them; I did discourse about the business again, and did oppose it all: after a while he began to be very hot in the business about Lambert: said I, you were heretofore too forward; says he, if it be the business of the king's head I will never deny it, call me to an account when you will: I have observed in Ireland, that it hath been generally reported that he was either the man that cut off the king's head, or that held it up, as I said before, and I have heard them sometimes call him Grandsire Greybeard.

*Hulet.* My lord, I do confess I know the gentleman very well, we were in a regiment together; I never discoursed with any concerning this, but only once at a place going from Cullen to Munster we did drink at a place called Goran, we were discoursing about the business of the king, the justification of the cutting off his head; saith Stammers, I did hear that you were one of the persons for that purpose; said I, they that say so, do me wrong: saith he, it is no matter if you were so, for it was a just act: said I, whether it was or no I have nothing to do to justify it; he was speaking, as I hope to be saved, I would have done it.

*Walter Davis* sworn.

*Counsel.* What can you say, Mr. Davis, to this business?

*Davis.* Gentlemen, that which I can say is this; in January last was two years I was at Dublin, I met captain Hulet, he invited me to take share of a pint of wine, I went with him to a tavern; when we were in the tavern he called for a pint of wine, and I called for another; before we had drunk the last pint of wine, said I to captain Hulet, I pray resolve me this one question; it is reported that you took up the king's head, and said, 'Behold the head of a Traitor.' Sir, said he, it was a question I never resolved any man, though often demanded; yet, saith he, whosoever said it then it matters not, I say it now, it was the head of a Traitor.

*Hulet.* I confess we did meet together, as you say, but I must and do deny the words.

*Lieut. Colonel Nelson* sworn.

*Nelson.\** My lords, and gentlemen of the jury, upon a discourse with colonel Axtell, as I

related once this day,\* about six years since, in many other discourses we fell to discourse about the death of the late king; I supposing he had been acquainted with that affair, I desired him to tell me those two persons disguised upon the scaffold; he told me I knew the persons as well as himself; saith he, they have been upon service with you many a time; pray, sir, said I, let me know their names? truly, said he, we would not employ persons of low spirits that we did not know, and therefore we pitched upon two stout fellows; who were those, said I? It was Walker and Hulet, they were both sergeants in Kent when you were there, and stout men; Who gave the blow, said I? saith he, poor Walker, and Hulet took up the head; pray, said I, what reward had they? I am not certain whether they had thirty pounds apiece, or thirty pounds between them.

*Hulet.* Pray let Mr. Axtell speak to this, he is hard by.

*Colonel Tomlinson* sworn.

*Counsel.* Pray tell my lords your knowledge in this business.

*Tomlinson.* My lords, and gentlemen of this jury, I cannot punctually remember what their habits were; they had close garments to their bodies, they had hair on their faces, one was gray to the best of my remembrance, the other was flaxen.

*Counsel.* Can you tell who struck the blow?

*Tomlinson.* My lord, I cannot remember, but I think he with the gray hair on his face did it.

*Nelson.* My lord, I will not positively say it, but it came lately to my mind, that I did hear in Ireland by col. Pretty that Hulet did it; my lord, this colonel Pretty is alive in Ireland.

*Benjamin Francis* sworn.

*Francis.* My lords, and gentlemen of the jury, as to the prisoner at the bar, he was very active in that horrid act; there was two of them had both cloaths alike, their frocks were close to their bodies, (as I remember,) they were rather in butchers habits of woollen; one had a black hat on his head cock'd up, and a black beard, and the other had a gray grised perriwig

(pointing to Mr. Hulet,) and his beard was of the same colour, if he had any. I was coming from Westminster, the scaffold was encompassed within with a great guard of soldiers of Red-coats, I think commanded by Biscoe.

*Hulet.* Was you upon the scaffold?

*Francis.* No, Sir, there was none of my constitution upon the scaffold.

*Counsel.* Fuller evidence I think cannot be expected; you have heard all the witnesses; what can you say for yourself?

*Hulet.* My lord, here are several witnesses examined concerning the business, and for my

\* See Axtell's Trial, and the Note p. 1156.

part I do not understand the law; I must leave it to the Court. I can upon the other account prove where I was at that very time; I can in the next place, my lord, since I came into London, for I did not hear it before, I can tell you who was the person, that did that act; I can bring forty and forty witnesses that will prove, who they were that did it, as I have been informed by several witnesses, that they know who was the person that did it: Upon the other account, I can prove where I was that day, but I did not know, when I was arraigned, what was laid to my Charge; here were some Examinations taken before my Lord Mayor concerning the person or persons, that did that act. [Here he offered a paper, a copy of the said Examinations, subscribed Mary Brandon, and divers others.]

Mr. Sec. Morrice. Was you not examined in the Tower?

Hulet. Yes, Sir.

Mr. Sec. Morrice. Did not we tell you that you were charged with cutting off the head of the king?

Hulet. Yes, Sir, you did tell me so.

L. C. Baron. Then you had time to provide your witnesses.

Hulet. I was a close prisoner.

L. C. Baron. Where were you on the day of Execution?

Hulet. I was a prisoner then at Whitehall.

L. C. Baron. For what?

Hulet. Upon this account we were taken up, about seven or nine of us were taken up, we were all sergeants, three of colonel Hacker's, the rest of Pride's and Fairfax's, and about ten o'clock at night were discharged.

L. C. Baron. For what was you imprisoned?

Hulet. For refusing to be upon the scaffold.

Burden. It was a common speech among the soldiers, that Hulet cut off the king's head.

L. C. Baron. How long before did you see Hulet upon the guard?

Burden. The day before, but not that day, nor the day after.

L. C. Baron. William Hulet, the evidence against you is twofold, one concerning the cutting off the king's head, the other that you were in a frock; if it be proved that you did not cut off the king's head, yet if you were in a frock in that place, it will not excuse you; if you have anything to say I shall be glad to hear it.

Hulet. I desire the persons may be examined upon Oath, prisoners and others, who was the person that did it; I mean Hacker, Hunkes and Phayre.

L. C. Baron. You that are the prisoner, for that which concerns Hacker and Phayre, you know what conditions they are in, one already tried for his life, the other a prisoner in the Tower; and Hacker saith himself he doth not know the person at all; you that are prisoner at the bar, the Court conceives you have had time to get your witnesses here; you were informed of the business before you came here, yet notwithstanding, it is conceived there are

some here that can say something tending to the information of the jury, but they are not to be admitted upon Oath against the king.

*Sheriff's Officer* examined.

*Sheriff's Officer.* My lord, all that I can say in this business is this; one of our fellows that belong to our master, the sheriff, John Rooten by name, he and I were talking about this very story, and he did acquaint me with this, That he was in Rosemary Lane, a little after the execution of the king, drinking with the hangman, that he did urge him whether he did this fact: God forgive me, saith the hangman, I did it, and I had forty half-crowns for my pains.

*Abraham Smith* examined.

*Smith.* My lord, as soon as that fatal blow was given I was walking about Whitehall, down came a file of musketeers; the first word they said was this, Where he the bargemen? Answer was made, Here are none; away they directed the hangman into my boat; going into the boat he gave one of the soldiers a half-crown; said the soldiers, Watermen, away with him, be gone quickly; but I fearing this hangman had cut off the king's head, I trembled that he should come into my boat, but dared not to examine him on shore for fear of the soldiers; so out I lanced, and having got a little way in the water, said I, who the Devil have I got in my boat? Says my fellow, says he, why? I directed my speech to him, saying, Are you the hangman that cut off the king's head? No, as I am a sinner to God, saith he, not I; he shook every joint of him; I knew not what to do; I rowed away a little further, and fell to a new examination of him, when I had got him a little further: Tell me true, said I, are you the hangman that hath cut off the king's head? I cannot carry you, said I; No, saith he, I was fetched with a troop of horse, and I was kept a close prisoner at Whitehall, and truly I did not do it; I was kept a close prisoner all the while, but they had my instruments. I said I would sink the boat if he would not tell me true; but he denied it with several protestations.

*William Cox* examined.

*Cox.* When my lord Capell, duke of Hamilton, and the earl of Holland, were beheaded in Palace-yard in Westminster, my lord Capell asked the common hangman, said he, Did you cut off my master's head? Yes, saith he. Where is the instrument that did it? He then brought the ax. This is the same ax, are you sure? said my lord. Yes, my lord, saith the hangman, I am very sure it is the same. My lord Capell took the ax, and kissed it, and gave him five pieces of gold. I heard him say, Sirrah, wert thou not afraid? Saith the hangman, they made me cut it off, and I had thirty pounds for my pains.

*Richard Abell* examined.

*Abell.* My lord, in the house of one Mr.

Bramston I did hear Gregory himself confess that he cut off the king's head.

*Lord Chief Baron.* You that are the prisoner at the bar, the Court is willing to give all full scope, as far as may be, to examine the truth of the fact; as they would not condemn the innocent, so they would not acquit the guilty: Do you desire further time to examine the truth of it, before it be put upon the Jury?

*Hulet.* I do confess I do not understand the laws, I desire a little further time; I desire the Jury may be withdrawn; I desire a fortnight's time, but submit to the Court.

*A Stranger examined.*

*Stranger.* My lord, I was with my master in the company of Brandon the hangman, and my master asked Brandon whether he cut off the king's head, or no? He confessed in my presence that he was the man that did cut off the king's head.

*Lord Chief Baron.* You that are the prisoner at the bar, the Court was willing to give you as much time as they could by law; the Jury hath been charged, and evidence given; all those witnesses have been examined that we could hear of now for your advantage; I will say something to you. It was here said, and given in evidence, that Axtell did send a boat to fetch the common hangman: If we knew more that might tend to your advantage, it should be repeated. You Gentlemen of the Jury, mark it; There is first Gittens, he swears that he was in the same regiment that you were in 12 or 13 years together; he saith that he and others were called together upon their oaths, and you among the rest; and there was an oath of secrecy, asking them if they would do such an act; they all refused to do it, so did you; but he said, the day of execution of the king this Gittens got among them, and one captain Webb kept the door, and he saw you fall before the king, and ask the king forgiveness; he said he heard your voice, and so knew you; and that the day after captain Atkins said, you shall see Hulet shortly come to preferment; and he saith he did not see you in the regiment that day; and that Hewson and all the regiment used to call you Father Grey-beard. Stammers he saith, that you was captain-lieutenant to col. Hewson's troops; and you coming to Lutterels town asked him several particulars, whether he had been in the king's army? Walking up and down, you said you were the man be-headed king Charles, and for that you had one hundred pounds; this he swears positively. Sampson Toogood, he swears he saw you come to col. Hewson's in 1650, you talked to him very familiarly; when you were gone he asked who you were? he told him you were a captain-lieutenant of horse; and he said that you were a very mettled fellow, and did the king's business upon the scaffold; that afterwards col. Hewson's regiment being discharged, you came to be of Pretty's regiment, and that

he told this gentleman that he was assured by col. Hewson that it was you that either cut off the king's head, or took it up and said, 'Behold the head of a Traitor.' He saith afterwards, that in 1654 in Carlow he asked you the same question, and you demanded of him, Who told him; he answered he was told by several persons, namely, Hewson and Pretty; you said, what I did I will not be ashamed of, and if it were to do I would do it again; he says again, at another time, that you were one of the two persons who were then upon the scaffold, and that there were staples to enforce the king to submit, if he struggled; I had that about me which would have done the business. And he says, in November last you came to a meeting upon a summons of col. Jones, and then did avouch Lambert's quarrel; he said you were too forward heretofore; you said, if it be the business of the king's head I will never deny it, call me to an account when you will. He heard many call you 'Grandsire Grey-beard.' Then there is another witness, I think his name is Davis, he was in discourse with you drinking two pints of wine; it is reported (says he) you took up the king's head, and said, 'Behold the head of a Traitor;' and he desired you to resolve him whether it was so or no; you said again, it had been demanded often, but you never resolved any man: you said, whosoever said it then, I say now, it was the head of a traitor. Nelson, he swears, That about six years since he was in discourse with Axtell about it, and Axtell told him they were a couple of stout men to your knowledge, (speaking to Nelson;) I was one to do in that affair; we made choice of two, Walker and Hulet: 'who gave the blow?' Walker; but Hulet took up the head. Col. Tomlinson, he says, that there were two on the scaffold, one that had a gray beard, and the other somewhat flaxen. Nelson also heard by col. Pretty, that you did it. And then Ben. Francis, he says, they had both frocks alike, one a black beard, and a gray-grisled perriwig, and believes he was about your stature. This is the substance of what the witnesses have said against you. Gentlemen, you hear what has been proved on behalf of the prisoner, that is, if you believe the witnesses that are not upon oath, that Brandon confessed it, and denied he did it: Several witnesses that say Brandon confessed he did it, and that he told them of a sum of money that was given him. Gentlemen of the Jury, you see the whole point in this case, the indictment is for compassing and imagining the death of his late majesty; the evidence goes two ways, part of the witnesses one way, part another way; if you believe either of them, then you ought to find that the defendant is guilty; if either he was in the frock, though he was not the man that did it; or if you find he did it, it is a clear testimony of his imagining and compassing the death of the king. Now it rests upon you to consider the evidence that is given for the

common hang-man, that he should be the man that did it, that the prisoner at the bar did not cut off the head: On the other side, if you do believe he was one of the two in the frocks, upon the relations of these persons, Pretty, Hewson, and Axtell; if you believe it upon these relations, and after his own confession, that if he was to do it again, he would do it; then upon this evidence that is given you, he is to be found guilty, though he did not cut off the king's head. You have heard the evidence on all sides, it rests upon you; pray, go together, and consider of your verdict. I have forgotten one thing. God forbid I should omit any thing that may be as well for advantage, as against the prisoner at the bar: If you take it singly, if you have nothing, of other proof, what another man says of me doth not charge me, unless there be something of my own; what you have heard from himself, and what you have heard by relations from others, that is to be left to you. It is my duty to tell you, that which is said by another of me, that alone is not a pregnant evidence; you must remember withal what is sworn positively, what he said himself; this being said I must leave it to you. Pray go together.

[After a more than ordinary time of consultation, the Jury returned to their places.]

*Clerk.* Are you agreed of your verdict?

*Jury.* Yes.

*Clerk.* Who shall say for you?

*Jury.* Our foreman.

*Clerk.* William Hulet, alias Holet,<sup>a</sup> hold up thy hand. Gentlemen, look upon the prisoner at the bar: how say you, is he Guilty of the High-Treason, &c.

*Foreman.* Guilty.

*Clerk.* Look to him, keeper. What goods and chattels?

*Jury.* None, to our knowledge.

[And then the Court adjourned till to-morrow morning seven o'clock, in this place.]

October 16th, 1660.

*Sessions-House in the Old-Bailey.*

Proclamation being made.

*Clerk of the Crown.* Set Isaac Pennington, Henry Marten, Gilbert Millington, Robert Tichburn, Owen Roe, Robert Lilburn, Henry Smith, Edm. Harvey, John Downs, Vincent Potter, Augustin Garland, Simon Meyne, James Temple, Peter Temple, and Tho. Wayte,\* (in all fifteen) to the bar; which was done accordingly.

\* "Those whom I mentioned before," says Ludlow, "to have been excepted both for life and estate, with a reserve that if upon trial they should be found guilty, sentence of death should not be executed against any of them, except by act of parliament, were brought to be tried before this Court: where some of

*Clerk of the Crown.* You the prisoners at the bar, those of the jury that were last called are to pass, &c. If you, or any of you, will challenge all, or any of them, you must challenge them when they come to the book, before they be sworn.

Charles Pitfield, Christopher Abdy, Richard Cheyney, George Tirrey, Daniel Cole, ——— Hall, Richard Abell, Edward Starnel, Edmund Pitt, Will. Witcomb, Fran. Dorrington, and T. Nicoll, called and sworn of the Jury.

*Clerk of the Crown.* Isaac Pennington and Henry Marten, &c. Hold up your hands. Gentlemen that are sworn, look upon the prisoners at the bar. You shall understand that the said Isaac Pennington, &c. together with, &c. [Here the Indictment was read.] unto which they and every of them have severally pleaded Not Guilty, and for their trial have put themselves upon God and the country, which country you are: Now your charge is to enquire, &c.

*King's Counsel.* May it please your lordships, and you gentlemen of the jury, the prisoners at the bar stand indicted of High-Treason, for compassing and imagining the death of the late king Charles the first, of glorious memory. The Indictment sets forth several overtacts, by which that imagination doth appear, the treason itself is the compassing: Our evidence will go on thus; we shall prove against them all, that they did sit, in that which they called the High Court of Justice, upon the king, whilst the king was a prisoner, at the bar, most of them did sentence him; all but Harvey and Pennington did sign that bloody warrant for his execution; and that one of the prisoners at the bar was in before the High Court of Justice, consulting of bringing it about. When we have proved this, I think it is enough. Pray call the witnesses.

*Harvey.* My lord, according to my duty, I shall save this honourable Court all their trouble. I do humbly acknowledge that I was and did sit in that Court, but I did not sign and seal that warrant.

them pleaded guilty simply; but others, though they acknowledged the guilt, denied the malice; and some confessing the fact, denied the guilt. Of this last number was col. Henry Martin; of whose trial I shall only mention some few of the most remarkable passages, and so leave this melancholy subject."

He then gives a very brief account of what Martin said on his trial, and concludes thus:

"But notwithstanding these, and divers other things which he said in his defence, with as much presence of mind as solidity of argument, he was brought in guilty of the treason for which he had been accused. In pursuance of which verdict, the sentence of condemnation was passed against him; the convention making no provision for securing the lives either of him or the rest of the gentlemen that had been decoyed into a surrender of their persons, though they had implicitly promised them favour."



*L. C. Baron.* It is very true, Mr. Harvey. *Harvey.* I hope your lordships and this honourable bench will give me leave, (in that time which you shall appoint) to shew you my reasons that I did it not of malice, and it was an error not of will, but of judgment; what I have to say will be thought not for the annihilating, yet for the extenuation of my crimes.

*L. C. Baron.* Say now what you will, only consider with yourself whether you have not already spoken as much as you can for the extenuation of it; say what you can further.

*Harvey.* Let me speak a word.

*L. C. Baron.* Go on, sir.

*Harvey.* My lord, I do humbly conceive, if I had conceived that I had then done any thing of treason, I would not for all the world have been there; I was present when his majesty did not own the Court, desiring that both his houses might meet, that he might have a conference with them for settling of the peace: My lord, heartily and unfeignedly I did endeavour that that advice might be embraced, and that no sentence might be pronounced. I was one of those, with some others, that did so far promote it, that that which they called the High Court of Justice did withdraw to consider of it, but the major part of it did dissent. But, my lord, I was so unhappy as to return to the Court, though with reluctancy; I went with a resolution not to go more to them, nor never did; I was summoned to come to the court; I did declare I abhorred the thing, that my soul had reluctancy against it, and I was greatly grieved and troubled at it, and I did refuse any more to come, or to consult about any thing that followed, in order to his majesty's death, and to sign, and to seal. And that I may make it appear to your lordships, I pray I may have a witness or two examined.

*L. C. Baron.* Name them. Did he sit upon the day of Sentence?

*Counsel.* Yes, he did; he followed it.

*Mr. Edward Corbet examined.*

*Mr. Corbet.* My lord, the attestation which I this day make solemnly, in the holy fear of Almighty God, and in awful reverence of this great tribunal, hath only this great scope, that colonel Harvey, the prisoner at the bar, upon that day of signing the warrant for that horrid execution of his most excellent majesty, not in title only, but in reality, he finding me as I was passing to the duty of my place in the Assembly of Divines then sitting, he seized on me, and desired privacy of time and place, that he might disburden his soul and spirit unto me; it was then about nine o'clock in the forenoon to the best of my remembrance.

*L. C. Baron.* What day, I beseech you?

*Corbet.* To the best of my remembrance upon the Monday; Sir, says he, I desire to make known unto you the deep horror that sits upon my spirit, the sadness and grief, above all expressions, that my present case has cast me into; I have endeavoured, Sir, (says he) in the sight of God, all that possibly I could to

divert them from the sentence, I could not prevail. Sir, says he, I have been this morning solicited with very much earnestness, that I would go, and sign, and seal, and order that wicked execution, which my soul abhors; and, Sir, that I might be removed and withdrawn from all temptations and solicitations of such a wicked fact, I beseech you spare me your time this day; which I did, in the presence of another divine, till four o'clock in the afternoon, and then I parted and went to Westminster, to sign and assist that which I did apprehend my bounden duty, the Vindication of the Assembly of Divines, wherein we did testify, that it was far from our thoughts to advise the parliament to any such unheard-of unnatural act.

*Counsel.* We do admit that after he sat, and sentence past, that he did not sign.

*Harvey.* Be pleased to call on Mr. Thomas Langham, he hath heard me often declare against that act.

*Mr. Thomas Langham examined.*

*L. C. Baron.* What do you say, Mr. Langham, as to this business?

*Langham.* Sir, about the time that his majesty was executed in 1618, I was then servant to alderman Sleigh, who was formerly partner with this colonel, and he frequently came to alderman Sleigh's every night: and the alderman having some business with him, would ask him what news there was at the High Court of Justice; he usually told him the passages upon any day; the alderman asked him, if so be he thought his majesty might escape? He told them this, That he would do what lay in his power, that he might not come to have sentence pass: Upon Saturday, being also there, he told him this, That he had done what lay in his power, to hinder the sentence, but could not attain his design; but he was resolved he would never sign nor seal to his majesty's death, for it was utterly against his judgment.

*Harvey.* There is another, (my lord,) and but one more, that is George Langham.

*L. C. Baron.* To what purpose? This is believed.

*Harvey.* I shall only crave and supplicate this favour of this honourable bench, that this honourable bench would be pleased, on my behalf, (since I have endeavoured it two months before,) to present my humble Petition to his sacred majesty, and to intercede for mercy and favour on my behalf; myself, my wife, and thirteen children, shall humbly pray.

[The Court received the said Petition, and promised to present it to his majesty.]

*Mittington.* I do not know whether it will be seasonable for me to interpose now, I would speak a little.

*L. C. Baron.* Is he next in order?

*Clerk.* No, my lord, Pennington is next.

*Pennington.* I am unwilling to be troublesome to the Court. This I shall take the boldness to say, (which shall be nothing but truth,) I never had a hand in plotting, contriving ma-

licious practices against his majesty, demonstrated by my utterly refusing to sign the warrant for his execution, though often solicited thereto; I cannot deny but I sat amongst them that day of the sentence, but I cannot remember I was there when the sentence passed. My sitting amongst them was out of ignorance, I knew not what I did, therefore I hope you will believe there was nothing of malice in any thing I did; I was misled to it.

*L. C. Baron.* I cannot hear you. [He not speaking aloud]

*Pennington.* It was ignorance, not malice, that led me; If I had known what I had done I would not have done it; I humbly pray that there may be a favourable construction made of it, I humbly leave it with you. I did my duty to pray for the king, but had no malice to act willingly against him.

*Clerk.* Henry Marten.

*Counsel.* He did both sign and seal the precept for summoning the Court, and the Warrant for execution; sat almost every day, and particularly the day of sentence.

*Marten.* My lord, I do not decline a confession, so as to the matter of fact, the malice set aside, 'Maliciously, murderously, and traitorously.'

*Counsel.* If you have any thing to say to that, we will prove it.

*L. C. Baron.* That I may inform you in it, there is malice implied by law, malice in the act itself: That which you call malice, that you had no particular intention or design against the king's person, but in relation to the government, that will not be to that present business; if it should extenuate any thing, that would be between God and your own soul; but as to that which is alledged in the indictment, maliciously, murderously, and traitorously, they are the consequences of law. If a man meet another in the street, and run him through, in this case the law implies malice; though but to an ordinary watchman, there is malice by the law in the fact; if there was no such expressed personal malice as you conceive, yet the fact done implies malice in law.

*Mr. Sol. Gen.* My lord, he does think a man may sit upon the death of the king, sentence him to death, sign a warrant for his execution, meekly, innocently, charitably, and honestly.

*Marten.* I shall not presume to compare my knowledge in the law with that of that learned gentleman; but according to that poor understanding of the law of England that I was capable of, there is no fact that we can name that is a crime of itself, but as it is circumstantiated. Of killing a watchman, as your lordship instanced, a watchman may be killed in not doing his office, and yet no murder.

*L. C. Baron.* I instanced that of a watchman, to shew there may be a malice by law, though not expressed; though a man kill a watchman, intending to kill another man, in that case it is malice in law against him: So in this case, if you went to kill the king when he

was not doing his office, because he was in prison, and you hindered him from it, the law implies malice in this. It is true, all actions are circumstantiated, but the killing of the king is treason of all treasons.

*Justice Foster.* If a watchman he killed it is murder; it is in contempt of magistracy, of the powers above; the law says that contempt adds to the malice.

*Counsel.* We shall prove against the prisoner at the bar (because he would wipe off malice,) he did this very merrily, and was in great sport at the time of the signing the Warrant for the king's execution.

*Marten.* That does not imply malice.

*Ewer sworn.*

*Counsel.* Come, Sir, you are here upon your oath, speak to my lords and the Jury; you know the prisoner at the bar very well, you have sometimes served him; were you present in the Painted Chamber, Jan. 29, 1649, at the signing the Warrant, the parchment against the king.

*Ewer.* The day I do not remember, but I was in that chamber to attend a gentleman there; I followed that gentleman, [looking at Mr. Marten,] I followed that gentleman into that chamber.

*L. C. Baron.* After what gentleman?

*Ewer.* Mr. Marten, my lord. I was pressing to come near, but I was put off by an officer, or soldier there, who told me I should not be there; I told him I was ordered to be by that gentleman. My lord, I did see a pen in Mr. Cromwell's hand, and he marked Mr. Marten in the face with it, and Mr. Marten did the like to him; but I did not see any one set his hand, though I did see a parchment there with a great many seals to it.

*Sir Purbeck Temple sworn.*

*Counsel.* What do you know of that gentleman in his carriage of this business?

*Sir P. Temple.* My lords, I being present in town, when that horrid murder was contrived against the late king, there came some persons of honour, servants to the late king, to my father's house, sir Edward Partridge, to engage me to join with them to attempt the king's escape. In order whereunto they told me, nothing would tend so much to his majesty's service, as to endeavour to discover some part of their counsels, for that it was resolved by Cromwell to have the king tried at the High-Court of Justice, as they called it, the next day, and desired me (if possible) to be there to discover their counsels, whereby the king might have notice, and those that were to attempt his escape. In order whereunto, the next day, by giving money to the officer of the Painted Chamber, I got in by day-light in the Lobby of the lords-house; I espied a hole in the wall, under the hangings, where I placed myself till the council came, where they were contriving the manner of trying the king when he should come before them: and after the manner of

praying, and private consults amongst themselves, when their prayer was over, there came news that the king was landed at sir Robert Cotton's stairs; at which Cromwell run to a window, looking on the king as he came up the garden, he returned as white as the wall: returning to the board, he speaks to Bradshaw, and sir Henry Mildmay, how they and sir William Brereton had concluded on such a business; then turning to the board, said thus: 'My masters, he is come, he is come, and now we are doing that great work that the whole nation will be full of; therefore I desire you to let us resolve here what answer we shall give the king when he comes before us; for the first Question that he will ask us will be, by what authority and commission we do try him? To which none answered presently. Then after a little space, Henry Marten, the prisoner at the bar, rose up, and said, In the name of the commons and parliament assembled, and all the good people of England; which none contradicted, so all rose up, and then I saw every officer that waited in the room sent out, by Cromwell, to call away my lord such-a-one, (whose name I have forgot,) who was in the Court of Wards Chamber, that he should send away the instrument, which came not, and so they adjourned themselves to Westminster-Hall, going into the Court of Wards themselves, as they went thither. When they came to the Court in Westminster-Hall, I heard the king ask them the very same question that Cromwell had said to them.

*Sol. Gen.* Gentlemen, the prisoner at the bar confesses his hand to the warrant for executing the king; you see by his servant how merry he was at the sport; you see by this witness, how serious he was at it, and gave the foundation of that advice upon which they all proceeded; and now he says he did it not traitorously, I humbly conceive he means it was justifiable.

*Sir P. Temple.* At another time I was in town on a Friday, and wanting horses I went to Smithfield, where I saw the horses of state of his late majesty, to be sold in the common market; at which I called to the rider, said I, What makes these horses here? Says he, I am to sell them; why, said I, there is the king's brand upon them, C. R. and he shewed them me: said I, will you sell these horses? What price? He asked me three or four-score pound a piece; says I, who warrants the sale of these horses? Says he, Mr. Marten and sir William Brereton. Afterwards I heard the horses were taken into the Mews by the prisoner at the bar, and sir Will. Brereton.

*Counsel.* Was this before the trial?

*Sir P. Temple.* It was in 1642, or 1643.

*Counsel.* That's nothing to this business.

*Marten.* My lord, the commission went in the name of the commons assembled in parliament, and the good people of England: and what a matter is it for one of the commissioners to say, let it be acted by the good people of England?

*Sol. Gen.* You know all good people did abhor it. I am sorry to see so little repentance.

*Marten.* My lord, I hope that which is urged by the learned counsel, will not have that impression upon the court and jury that it seems to have, that I am so obstinate in a thing so apparently ill: my lord, if it were possible for that blood to be in the body again, and every drop that was shed in the late wars, I could wish it with all my heart: but, my lord, I hope it is lawful to offer in my own defence that, which, when I did it, I thought I might do. My lord, there was the house of commons, as I understood it, (perhaps your lordships think it was not a house of commons) but then it was the supreme authority of England; it was so reputed both at home and abroad. My lord, I suppose he that gives obedience to the authority in being, *de facto*, whether *de jure*, or no, I think he is of a peaceable disposition, and far from a traitor. My lord, I think there was a statute made in Henry the seventh's time, whereby it was provided, that whosoever was in arms for the king *de facto*, he should be indemnified, though that king *de facto* was not so *de jure*: and if supreme officers *de facto* can justify a war, (the most pernicious remedy that was ever adjudged by mankind, be the cause what it will) I presume the supreme authority of England may justify a judicature, though it be but an authority *de facto*. My lord, if it be said that it is but a third estate, and a small parcel of that, my lord, it was all that was extant. I have heard lawyers say, that if there be commons appurtenant to a tenement, and that tenement be all burnt down except a small stick, the commons belong to that one small piece, as it did to the tenement when all standing. My lord, I shall humbly offer to consideration, whether the king were the king indeed, such a one whose peace, crowns, and dignities, were concerned in public matters: my lord, he was not in execution of his offices, he was a prisoner. My lord, I will not defer you long, neither would I be offensive: I had then, and I have now, a peaceable inclination, a resolution to submit to the government that God hath set over me. I think his majesty that now is, is king upon the best title under heaven, for he was called in by the representative body of England. I shall, during my life, long or short, pay obedience to him: besides, my lords, I do owe my life to him, if I am acquitted for this. I do confess I did adhere to the parliament's army heartily; my life is at his mercy; if his grace be pleased to grant it, I have a double obligation to him.

*Sol. Gen.* My lord, this gentleman, the prisoner at the bar, hath entered into a discourse that I am afraid he must have an answer in parliament for it. He hath owned the king, but thinks his best title is the acknowledgment of the people; and he that hath that, let him be who he will, hath the best title. We have done with our evidence.

*Marten.* I have one word more, my lord, I

humbly desire that the jury would take notice, that though I am accused in the name of the king, that if I be acquitted, the king is not cast : it doth not concern the king that the prisoner be condemned, it concerns him that the prisoner be tried : it is as much to his interest, crown and dignity, that the innocent be acquitted, as that the nocent be condemned.

*Sol. Gen.* My lord, this puts us now upon the reputation of our evidence; and you may see how necessary it is to distinguish between confidence and innocence; for this very person that desires you to have a care how you condemn the innocent, he doth seem to intimate to you, that he is an innocent person at the bar; and yet confesses he did sit upon the king, did sentence him to death; that he signed the warrant for the execution; and yet here stands the person that desires you to have a care of condemning innocence: what is this at the bottom of it, but that the fact is such as I dare not call innocence, but would have you to believe it such? Gentlemen of the jury, was it your intention the king should be so tried as this prisoner moved? It will concern you to declare, that the people of England do abhor his facts and principles; every fact the prisoner hath confessed himself, the sitting in that Court, which was treason; his sentencing was treason; signing the warrant for execution was the highest of treasons: gentlemen, all that he hath to say for himself is, there was an authority of his own making, whereby he becomes innocent; but we hope, out of his own mouth you will find him guilty.

*Gilbert Millington.* I desire you to hear me; I come not hither to dispute, but to acknowledge; I will not trouble you with long discourses. My lord, it is not fit for wise men to hear them, I am not able to express them; I will not justify myself, I will acknowledge myself guilty. My lord, the reason why I said the last day, Not Guilty, was in respect of being upon the scaffold, and murdering the king, and those things; but I will waive all things, if your lordship will give me leave, and will go unto the lowest strain that possibly can be; I will confess myself Guilty every way. I was awed by the present power then in being. This I leave with you, and lay myself at your feet, and have no more at all to say, but a few words in a petition, which I desire you will please to accept, and so I conclude.

*Counsel.* We do accept this honest and humble confession, and shall give no evidence against him to aggravate the matter.

*L. C. Baron.* Your petition is accepted, and shall be read.

*Robert Tichburn.* My lord, when I first pleaded to the Indictment, it was, Not Guilty, in manner and form as I stood indicted; my lord, it was not then in my heart, either to deny or justify any tittle of the matter of fact; my lord, the matter that I was led into by ignorance, my conscience leads me to acknowledge; but, my lord, if I should have said Guilty in manner and form as I stood indicted,

I was fearful I should have charged my own conscience as then knowingly and maliciously to act it. My lord, it was my unhappiness to be called to so sad a work when I had so few years over my head; a person neither bred up in the laws, nor in parliaments where laws are made. I can say with a clear conscience, I had no more enmity in my heart to his majesty, than I had to my wife that lay in my bosom. My lord, I shall deny nothing; after I was summoned, I think, truly, I was at most of the meetings; and I do not say this, that I did not intend to say it before, but, preserving that *salvo* to my own conscience, that I did not maliciously and knowingly do it, I think I am bound in conscience to own it: As I do not deny but I was there, so truly, I do believe I did sign the instrument. And had I known that then, which I do now, (I do not mean, my lord, my afflictions and sufferings, it is not my sufferings make me acknowledge), I would have chosen a red-hot oven to have gone into, as soon as that meeting: I bless God, I do this neither out of fear, nor hopes of favour, though the penalty that may attend this acknowledgment may be grievous; my lord, I do acknowledge the matter of fact, and do solemnly protest I was led into it for want of years; I do not justify either the act or the person; I was so unhappy then as to be ignorant, and I hope I shall not now, (since I have more light) justify that which I was ignorant of: I am sure my heart was without malice: if I had been only asked in matter of fact at first I should have said the same; I have seen a little: The Great God before whom we all stand, hath shewn his tender mercy to persons upon repentance; Paul tells us, though a blasphemer, and a persecutor of Christ, it being done ignorantly, upon repentance he found mercy; my lord, mercy I have found, and I do not doubt but mercy I shall find. My lord, I came in upon the Proclamation, and now I am here, I have in truth given your lordship a clear and full account, whatever the law shall pronounce, because I was ignorant: yet I hope there will be room found for that mercy and grace that I think was intended by the Proclamation, and I hope by the parliament of England. I shall say no more, but, in pleading of that, humbly beg that your lordships will be instrumental to the king and parliament on that behalf—

*Counsel.* We shall give no evidence against the prisoner; he says he did it ignorantly, and I hope and do believe he is a penitent; and as far as the parliament thinks fit to shew mercy, I shall be very glad.

*Owen Roe.* I have not much to say, I never had any ability; therefore, my lord, it was never my intent upon my plea, as was said before, to deny any thing I have done; for I was clearly convinced that I ought to confess it before, and I do confess against myself, that I did sit there several times, and to the best of my remembrance I did sign and seal the warrant for his execution; and truly, my lord, it was never in my heart to contrive a plot of this na-

ture. How I came there I do not know, I was very unfit for such a business, and I confess I did it ignorantly, not understanding the law, so was carried away hidden in the business, not understanding what I did; therefore, my lord, I humbly entreat this honourable Court, that you will consider of it, and look upon me as one that out of ignorance did it; and if I had known of my act, I would rather have been torn in pieces with a thousand horses. When I heard of the Declaration and Gracious Pardon of his majesty, I confess I went to my Lord Mayor's, and laid hold of it, and I thought my life as secure as it is now in my own hands; but I do wholly cast myself upon the king's mercy; and as I have heard he is a gracious king, full of lenity and mercy, so I hope I shall find it. I was never against government; it is a blessed thing that we have it; I hope all the nations will be happy under it. I shall submit to his majesty and government. I can say no more; I was not brought up a scholar, but was a tradesman, and was merely ignorant when I went on in that business; I do humbly entreat your lordships, that you would, as tenderly as may be, present my case to the king, whom I rest upon, and leave all to your lordships' wisdom and discretion, to do what you will concerning me.

*Counsel.* We accept his confession, and do hope he is penitent before God, as well as before the world.

*Robert Lilburn.* Be pleased to give me leave to speak a few words; I shall be ingenuous before your lordships, I shall not wilfully nor obstinately deny the matter of fact; but, my lord, I must, and I can, with a very good conscience, say, that what I did, I did it very innocently, without any intention of murder; nor was I ever plotter or contriver in that murder; I never read in the law, nor understood the case thoroughly; whatever I have done, I have done ignorantly.

*L. C. Baron.* Because you shall not be mistaken in your words, God forbid that we should carp at your words; the word innocent hath a double acceptation, innocent in respect of malice, and innocent in respect of the fact.

*Lilburn.* The truth is, my lord, I was for the withdrawing of the Court, when the king made the motion to have it withdrawn; and upon the day, my lord, that the king was put to death, I was so sensible of it, that I went to my chamber and mourned, and would, if it had been in my power, have preserved his life. My lord, I was not at all any disturber of the government; I never interrupted the parliament at all. I had no hand in those things, neither in 1648, nor at any other time. I shall humbly beg the favour of the king, that he would be pleased to grant me his Pardon, according to his Declaration, which I laid hold on, and rendered myself according to the Proclamation.

*Counsel.* We shall say nothing against him.

*Henry Smith.* My lord, I shall not desire to spend your lordship's time: what I have done,

I did it ignorantly, not knowing what I did. I shall not deny the matter of fact; but as to that I pleaded Not Guilty before, it was in relation to that, which I was ignorant of, the law of the nation; I have not been bred to it. I humbly desire your lordships to consider, that what I did was done ignorantly, not knowing the law.

*Counsel.* What was that?

*Smith.* I do confess that I sat in the Court, I do not remember that I signed or sealed, [both the Warrants being shewed him adds] My lords, I confess the hands are like mine, but whether they be so or no, I know not.

*Counsel.* Then we will prove it. Is the seal yours?

*Smith.* I do not know.

*Counsel.* Do you confess you were in the Painted Chamber the 29th of Jan.? Do you remember any thing of that?

*Smith.* I do not certainly know that.

*Counsel.* My lord, he hath said enough. Shall the Jury doubt of that which he believes?

*Smith.* I do not remember that I did write it.

*Counsel.* My lord, we press it no further, he hath confessed enough.

*Smith.* My lord, what I have done I beseech you consider I did it in ignorance, not knowing the law; there were these about me that were able to call me, who were then in authority, whom I dared not disobey, if so, I had been in danger also.

*Counsel.* My lords, we have done; be pleased to direct the Jury upon these several evidences and confession.

*Smith.* I beg one word, I must declare this, I can speak it seriously, that from the first to the last of these unhappy wars, I have been a man of trouble and sorrow; I have been, as many wiser men have been, run upon error. My lord, I know not what I have done; I pray that this Court will be pleased to be a mediator for me, that I may have his majesty's favour, and that this Petition may be received on my behalf. [He then delivered his Petition to the Court.] I can rejoice for that happy settlement that is again in the nations, and declare cheerfully my humble submission to that government, and desire the Lord will bless and prosper his majesty and the parliament in these nations; my lord, I rendered myself according to the Proclamation; I shall say no more.

*L. C. Baron.* Gentlemen, you of the Jury, these prisoners at the bar, that is, Mr. Harvey, Pennington, Marten, Millington, Titchburne, Roe, Lilburne, and Mr. Smith, there are eight, these are persons who by the Act of Indemnity are to be tried for their lives for the treasons they have committed, but no execution is to be until the parliament have further considered the matter that is before us, and you are to find the matter of fact: what mercy they shall find hereafter, that is to be left (as I told you) to the consideration of the parliament, we are to proceed according to law and

justice. They are all indicted for compassing and imagining the death of our late sovereign lord Charles the First, of most glorious memory; and for that that hath been opened to you there are so many overt-acts, which are as so many evidences to prove that indictment, which is the compassing and imagination of their hearts to put the king to death. If any one of these be proved, that is alone enough to prove the Indictment, which is the compassing and imagining of the heart, that is the treason, the others are but evidences. If any thing burst forth from the mouth, or from the hand, as here it is, these are evidences of the imagination of the heart; for this you have heard by the confession of all of them, that they did enough to find the indictment: they have all of them confessed their sitting upon the king in that traitorous assembly which they called the High Court of Justice. There is one of the overt-acts expressly laid down in the indictment, they took upon them an authority to consider how to put the king to death, and that they did put the king to death, but they were mistaken, as some of them said, that the actual murdering of the king was not their meaning. But if they did that which tended towards it, they are all guilty of treason; it is all one to you, if they be guilty of any of these; either sitting, sentencing, or signing, they are guilty; and all of these, except two, are guilty of all these; the matter is clear and pregnant. There is something hath been said by many of them, with a great deal of expression of sorrow; they did confess (all but one) the fact; and that which tended to their defence was ignorance; but that doth not at all concern you. It will be taken in its due time into consideration; the several deportments of them all, that is for another judicature. Your business is to find the matter of fact; only let me repeat unto you, there is Mr. Harvey, who hath pleaded several matters which are not proper for you, expressing his sorrow and penitence, we shall not trouble you with that, because they are for the consideration of another court; we ought all to have a tender compassion, ought to be sorry with and for them that are sorrowful. The like of alderman Pennington. Marten hath done that which looks forward more than backward. I could wish with all my heart he had looked more backward; that is, to repentance of that which is past, than obedience to that which is to come; it is a trouble to repeat those things which he said himself, and truly, I hope in charity he meant better than his words were. Millington, he hath done the like with the rest, confessed the fact, put himself upon mercy wholly, and said, he 'was overawed by the present power.' This I repeat, not as any thing to you, who are to consider only matter of fact. For alderman Titchburn, he hath spoken very fully, and truly very conscientiously—upon the whole matter, acknowledges his ignorance, his sorrow, his conviction in point of conscience; and I beseech God

Almighty to incline his heart more and more to repentance. 'They that crucified Christ' (to use his own words) 'through ignorance, found mercy.' Colonel Roe, he confesses the same wholly, and casts himself upon the king's mercy, and he thought it a blessed thing that the king was restored again, and submitted wholly to mercy; and so did Mr. Lilburn, he said he went to his chamber and mourned the day the king was beheaded; I am very glad he had so early a sense of it. Henry Smith he did, it ignorantly, he was not guilty thus far; that was, he was led on, even like one silly sheep that follows another; by what relation I have heard of the person, at that time he was not thought fit to be of the Privy Council. There is nothing more to say to you. The fact is confessed by them all. It is so clear you need not go from the bar.

[After a little consultation between the Jurors, they returned to their places.]

*Clerk of the Crown.* Are you agreed of your verdict?

*Jurors.* Yes.

*Clerk.* Who shall say for you?

*Jury.* Our foreman.

*Clerk.* Edmund Harvey, hold up thy hand. How say you, is the prisoner Guilty of the treason whereof he stands indicted, and hath been arraigned? or Not Guilty?

*Jury.* Guilty.

*Clerk.* Look to him, keeper.

*Clerk.* What goods and chattels, &c.

*Jury.* None to our knowledge.

The same question being asked touching alderman Pennington, Henry Marten,\* Gilbert

\* "One person escaped, as was reported, merely by his vices: Henry Marten, who had been a most violent enemy to monarchy. But all that he moved for was upon Roman or Greek principles. He never entered into matters of religion, but on design to laugh both at them and all morality; for he was both an impious and vicious man. And now in his imprisonment he delivered himself up to vice and blasphemy. It was said that this helped him to so many friends, that upon that very account he was spared." Burnet.

In Mr. Cox's Historical Tour in Monmouthshire, is given a whole chapter of 'Anecdotes of Henry Marten;' from which the following passage is extracted:

"He was first confined in the Tower, but soon removed to the castle of Chepstow; in both of which places he was treated with great lenity. His wife was permitted to reside with him; he had the full enjoyment of his property, and was allowed to receive visits, and to frequent, in company with a guard, the houses of the neighbouring gentry, particularly that of St. Pierre, where his portrait is still preserved. His situation could not be distressed, as Mrs. Williams recollected two of his maid servants, who always mentioned him as a kind master, and were able to save money in his service,

Millington, alderman Titchburn, colonel Roe, colonel Lilburn, and Henry Smith, they were severally found Guilty by the Jury in manner aforesaid. All which prisoners finding the place where they stood to be cold and unwholesome, prayed the court they might have leave to be returned to the prison 'till the court shall be pleased to command their farther attendance; which was granted.

The rest of the Prisoners aforesnamed, together with W. Heveningham, brought to the bar.

*Clerk.* You the prisoners at the bar, those

"Misfortune and imprisonment however do not seem to have had the smallest effect in changing his regicidal principles. His epitaph, composed by himself, proves that he died as he lived, a staunch republican; and an anecdote current in the family of St. Pierre, confirms this fact: conversing one day on the politics of past times, Mr. Lewis asked him if the scene could be brought back, and the actors again introduced on the stage of life, whether he would sign the warrant for the execution of his sovereign? Marten replied in the affirmative. Mr. Lewis, disgusted with this answer, withdrew his protection, and never again received him at St. Pierre.

"Marten lived to the advanced age of 78, and died by a stroke of apoplexy, which seized him while he was at dinner, in the 20th year of his confinement. He was buried in the chancel of the parish church at Chepstow. Over his ashes was placed a stone with an inscription, which remained there until one of the succeeding vicars, declaring his abhorrence that the monument of a rebel should stand so near the altar, removed the stone into the body of the church.

"The epitaph, composed by himself, is in these words:

#### HERE

September the 9, in the year of our Lord 1680,  
Was buried a true Englishman  
Who in Berkshire was well known  
To love his country's freedom 'bove his own  
But living immured full twenty year  
Had time to write as doth appear

#### His Epitaph

Here or elsewhere (all's one, to you, to me),  
Earth, air, or water, grips my ghostless dust  
None knows how soon to be by fire set free  
Reader if you an oft tried rule will trust,  
You'll gladly do and suffer what you must.

My life was spent with serving you, and you,  
And death's my pay (it seems) and welcome too;  
Revenge destroying but itself, while I  
To birds of prey leave my old cage, and fly.  
Examples preach to th' eye, care then (mine  
says)  
Not how you end, but how you spend your  
days.

Aged 73 years."

persons last called of the Jury are to pass, &c. If you, or any of you, will challenge all, or any of them, you must challenge them when they come to the book, before they be sworn.

*Clerk.* Charles Pitfield, Christopher Abdy, George Terry, Daniel Cole, Anthony Hall, Richard Abel, Edmund Starnel, Edmund Pitt, William Whitcomb, Francis Dorrington, Tho. Nicholl, Robert Sheppard, in all twelve, admitted and sworn of the Jury.

*Clerk.* If any man can inform, &c.

*Clerk.* John Downes, hold up thy hand, &c. and the like was said to all the other persons following, viz. Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, Thomas Waite, and William Heveningham. Look upon the prisoners at the bar, you that are sworn; you shall understand that John Downes, the prisoner at the bar, stands indicted, &c.

*King's Counsel.* May it please your lordships, and you gentlemen of the jury, the prisoners at the bar stand indicted of high treason, for compassing and imagining the death of the late king Charles the First, of blessed memory; the evidence by which we shall make out against them this treason of their heart, in compassing and imagining the king's death, (for that is the substance of the Indictment, and all that follows is but evidence,) will be by proving that they did sit as judges in that pretended Court of Justice when the king stood a prisoner at the bar; that they did sentence him to death, every one of them; and we shall prove against all but one of them that they did sign that Bloody Warrant for murdering of the king; and against one of them that stands at the bar we shall prove (to his shame and confusion of face) that he did spit in the face of our late sovereign lord.

*John Downes.* My lord, I have humbly pleaded Not Guilty; not with any intention to justify the fact, or to extenuate it; but, my lord, in regard there is that charged in the Indictment, that my conscience saith I am not guilty of, I durst not plead Guilty; otherwise, my lord, I should not have troubled you with Not Guilty, but should have humbly taken the shame and confusion for it; it is my intention to put the Court to as little trouble as possibly I can; therefore I do humbly intreat of your lordships, and the Court, that you will permit me to acknowledge that which will be a sufficient evidence of my conviction, if the Court so please, and that you will be pleased to hear me on my behalf; if I can humbly offer to you some special thing which is not in the case of another (I could wish it had, if it had we had none been here) I do humbly acknowledge, that to sit upon that occasion in that place is evidence enough to convince what is in the heart, except by some signal actions that might happen from some that might shew how it was his unhappiness to be put into such a business, yet had neither malice nor treason in his heart; I do humbly conceive that there is that goodness in you, that this plea, this allegation will be

most welcome to you. My lord, though there was such a thing, such an unparalleled thing, I was thrust into this number; but never was in consultation about the thing: God is witness I was not put in 'till the act was ready to pass in a second commitment, by one of the same number; I denied it, yet they said I must make one, I must take my share; so I came in. Never did I know of his majesty's being brought to London till he came. My lords, in this great unhappiness I think it is some mitigation, and I judge it a happiness, that so wise, prudent persons as this Court consists of, that you are my judges, that can look back, my lord, and consider what the times were then, and can, my lord, account it a happiness that there is a special wisdom in you, that in nice cases you will be able to make a distinction. I do indeed, my lords, sadly and seriously confess, that I was divers times with those persons that were called judges of the late king, at several meetings and sittings; it is long ago, I cannot say how often; I was several times there. My lord, I do humbly beg of your lordships, (I will trouble you as short as I can,) that you would be pleased so far to favour me as to give me leave to give you a short account of the business: the last day his majesty came to that which was called then a Court, several times he was brought, (I think thrice,) and his Charge was given in words high enough; he said he could not acknowledge their jurisdiction; that was the answer, my lord, till the last day; then I confess I was there. He that was called President did again and again tell him the heads of his Charge: told him he had several days given for consideration, that this was the last day that the Court (as they called themselves) would give him for his final answer; if he stood still to-day, and moved to the jurisdiction of the Court, they must take all *pro confesso*, and would give Sentence: My lord, to this his majesty indeed with a great deal of composedness and wisdom told them to this effect, I cannot own your jurisdiction; you have power enough indeed, I wish you may use it well; but because you are so ready to give a sentence which may be sooner given than avoided, I think fit to let you know that I have something that I desire to speak to my parliament, for I have something to offer unto them that will be satisfactory to you all, and will be for the immediate settlement of the kingdom in peace. My lord, he that was called President answered, that no notice could be taken of any thing, but only whether he would answer to his Charge: Upon that, my lord, his majesty indeed, (with the greatest earnestness that ever I beheld, and yet in no unseemly passion,) told them they might soon repent of such a sentence; that he did conjure them to withdraw once again, and to consider of it, if it were but half an hour, or (saith he, if that be too much for you) I will withdraw. My lord, here I can make my appeal to him that must judge me when you have done with me, I had not a murderous nor a traitorous thought against him; but sir, I confess such deep passions did fall

upon me, that truly myself I was not. I remember the persons between whom I sat, as it fell out, were one Mr. Cawly, and col. Walton, these two I sat betwixt, these were the words I spake to them, Have we hearts of stone? Are we men? They laboured to appease me; they told me I would ruin both myself and them; said I, if I die for it I must do it. Cromwell sat just the seat below me, the hearing of me make some stir, whispering, he looked up to me, and asked me if I were myself? what I meant to do, that I could not be quiet? Sir, said I, no, I cannot be quiet; upon that I started up in the very nick; when the President commanded the Clerk to read the Sentence, I stepping up, and as loud as I could speak, spoke to this effect, these words, or to the like purpose; My lord, (said I) I am not satisfied to give my consent to this sentence, but have reasons to offer to you against it, and I desire the Court may adjourn to hear me; presently he stepped up and looked at me; nay, saith he, if any one of the Court be unsatisfied, the Court must adjourn: Sir, accordingly they did adjourn into the inner Court of Wards; when they came there I was called upon by Cromwell to give an account why I had put this trouble and disturbance upon the Court? I did speak, sir, to this effect, (it is long ago, the very words I think I cannot speak,) but to this effect I did speak: My lord, I should have been exceeding glad if the Court had been pleased to condescend to this gracious expression; but it is not too late for me: I desire not his death, but his life, and that the nations may be settled in peace: The king now is pleased to offer, that if he might but speak with his parliament, he would offer to them such things as should be satisfactory to us all. So (said I) what would you have? Your pretence of bringing him to these proceedings was, that after such a long and bloody war his majesty would not condescend to such concessions as might secure the parliament's party; but now you hear him, that he will give every one of us satisfaction: I told them, sadly told them, (I think I may truly say more sadly than at this time,) that if they should go precipitantly off and give judgment upon him, before they had acquainted the parliament with what the king was pleased to offer, we should never be able to answer it; the rather, my lord, (and that I did press with all the little understanding that I had) if they did but consider the last concluded order that the parliament made after the passing of the act for trial, (that which was so called,) I say there was this order that shut up all, that upon any emergency that could not at that time be thought on in the house, the Court should immediately acquaint the house with it. My lord, I did infer as strongly as I could to them, that if this were not emergent I could not tell what was: The king denied the jurisdiction of the Court, and yet with all vehemency desired to speak with his parliament; were not these emergencies? If not, I knew not what were emergencies. My lords, besides this, there was another thing I did press,



that I thought was of greater consequence than this, as to the satisfaction of every man's particular conscience; that admitting (if it might be admitted) that the king was liable to his subjects, that they might call him to an account, and might condemn him, (I beg your pardon that I take the boldness to make such admissions,) but if such a thing might be admitted, certainly it did exceedingly become those judges that were to give such a sentence, (not against a common person, but against the greatest,) to be very well satisfied in matter of fact, to a full evidence before them, that such and such things that were said were true. I do acknowledge this, that to the best of my apprehension, (I wish it had been so to others,) there was a great shortness in this; I do humbly affirm this, that not one member of the Court did hear one witness *viva voce*; I did press that if the Court did give judgment against the king, without a fair examination, I said it was such a thing as no judge at any assizes would do against a common person. What I had was from Peters, and from some private whispers from one of them that is gone, and hath received his sentence and doom. Cromwell did answer with a great deal of storm; he told the president, that now he saw what great reason the gentleman had to put such a trouble and disturbance upon them; saith he, sure he doth not know that he hath to do with the hardest-hearted man that lives upon the earth; however, it is not fit that the Court should be hindered from their duty by one peevish man; he said, the bottom was known, that he would fain save his old master; and desired the Court, without any more ado, would go and do their duty. Another that spoke to me in answer was one that hath been before you, and hath received his sentence, but is not dead, (and I desire I may not name his name,) his answer was to what I have said, that some men were either scepticks, or infidels. After this I did go into the Speaker's Chamber, and there I did ease my mind and heart with tears, God only knows. I have an unhappy memory; I have slipt many things.

*L. C. Baron.* Remember yourself by papers; if you have any, no man will hinder you.

*Downes.* I have no papers; but, my lord, for the truth of this I have said, there are some witnesses that will make the substance, the effect of this appear.

*L. C. Baron.* Mr. Downes, there is one particular before you come to the witnesses, that after all these convictions you signed the warrant; if you deny it, the Council will prove it.

*Downes.* I did never hope, or think, that any thing I can say should be so satisfactory to you, but things might be retorted upon me; and perhaps what I thought might be for extenuating my crime may fall out to my disadvantage; I understand you do proceed upon three particulars, either signing the first warrant for constituting the Court; to my remembrance I know not of it; if my hand was to it I have forgot.

*Counsel.* Your hand is not to that, but we mean your hand is to the Warrant for Execution. Pray shew it him. [It was shewn him.]

*Downes.* My lord, how to reconcile that which hath been said before, with this that comes after, I leave it to you, I am totally at a loss. When those times were, how impetuous the soldiers, how not a man that durst either disown them, or speak against them. I was threatened with my very life, by the threats of one that hath received his reward I was induced to it. Certainly, my lord, it doth argue that there was not malice predominant; love and hatred cannot be at the same time in one person. Design, my lord, what should be my design? A poor, ordinary, mean man. Surely, my lord, I could not design any great matters or places. I knew myself unfit; I humbly beg you would give me leave to tell you a little what I got—

*Mr. Sol. Gen.* By your favour, my lord, the prisoners at the bar may say what they will by way of extenuation; but we expect that when they enter upon these discourses they will save your lordship's time, and ours, by a public confession, and evidence of sorrow. We cannot spend so long time to hear these long discourses: we will rather prove it against every man singly.

*Downes.* I will trouble you no further, I do acknowledge all; I humbly submit, and beg your favour, and leave myself upon my countrymen the Jury, and beg the king's mercy specially. Pray spare me one word, that you will hear but a witness or two unto that business.

*Counsel.* He doth confess he sat and signed; we believe he is sorrowful, and against his conscience he did sign: and that he did it out of fear, and from a threat; that he was over-awed; (so was the hangman too;) but after he had apprehended this sorrow, and declared his judgment upon the fact, he signed the warrant.

*Downes.* My lord, I do humbly beg his majesty's mercy; I came in upon the proclamation.

*Vincent Potter.* My lord, my condition requires ease for my body; [he had a fit of the stone upon him at the same time;] I pray that the passing the sentence for execution may be suspended.

*L. C. Baron.* The execution must be suspended, for you are within that qualification.

*Potter.* I desire only this, I am not in a condition to declare what I know, and would speak; I am mighty full of pain; if I am under that qualification, let me rest under that.

*Counsel.* Do you confess the indictment? Or will you put us to prove it?

*Potter.* I am one that came in.

*L. C. Baron.* It is thus with you, whether or no did you sit, sign, or act in this High Court of Justice against the king?

*Potter.* I will deny nothing; I confess the

fact, but did not contrive it; I am full of pain.

*L. C. Baron.* According to the demerit of the case in law you must receive judgment here, but no execution of that judgment shall be, until the king, by advice and consent of Lords and Commons, shall order the execution of it; you are to be tried now; do you confess you signed the warrant for execution of the king?

*Potter.* I do confess it, my lord.

*Counsel.* We do accept it.

*Potter.* I beseech you let me go to ease myself.

*L. C. Baron.* Officer, set a chair for him; [which was done.] Mr. Potter, sit down.

*Aug. Garland.* May it please your lordship, I came here this day intending, to have waved my plea, and referred myself to this honourable Court, to be recommended to the king's mercy and the parliament; but hearing of some scandal upon me, more than ever I did hear till within these few days, I shall desire your favour in hearing of my trial.

*Mr. Sol. Gen.* My lord, he saith well; for if he had confessed the indictment we should not have accepted it. Call the Witnesses.

*Garland.* I do confess this; I sat, and at the day of Sentence signed the warrant for execution.

*Mr. Sol. Gen.* And we will prove that he spit in the king's face.

*Garland.* I pray let me hear that, otherwise I would not have put you to any trouble at all.

*Clench sworn.*

*Counsel.* Do you know the prisoner at the bar, Augustine Garland?

*Clench.* I know him very well.

*Counsel.* Tell my lords and the Jury how you saw him behave himself to our sovereign lord the king when he was at the bar.

*Clench.* I was that day at Westminster-hall when the king had sentence; they hurried the king down, and Mr. Garland came down stairs by them; towards the bottom of the stairs he spit in his face a little distance.

*Counsel.* Do you believe he did it on purpose, upon your oath?

*Clench.* I suppose he did it somewhat suspiciously in that way; I did see the king put his hand in his left pocket, but I do not know whether the king wiped it off.

*Mr. Sol. Gen.* The king wiped it off; but he will never wipe it off so long as he lives: He hath confessed that he sat, that he sentenced, and that he signed: We say he contrived it at the beginning, and at last bid defiance to the king; I shall desire he may be remembered in another place.

*Garland.* I do not know that I was near him at that time: I do not remember this passage; I am afraid he is an indigent person. If I was guilty of this inhumanity, I desire no favour from God Almighty.

*L. C. Baron.* I will tell you this doth not

at all concern the Jury, but this circumstance possibly may be considered in another place.

*Garland.* I refer myself whether you be satisfied that I did such an inhuman act, I submit that to you; I dare appeal to all these gentlemen here, (looking upon the prisoners,) or any other, whether they ever heard of it, nor was I ever accused for such a thing till a few days since; but I wave my plea, and refer myself to the Court. Now, my lord, this is the truth of my case; there is that honourable gentleman, the Speaker of the house of commons, knows I lived in Essex in the beginning of these troubles, and was forced to forsake my habitation; I came from thence to London, where I have behaved myself fairly in my way. Afterwards in 1618 I was chosen a member into the parliament; in June 1648 I came in a member of the parliament. My lord, after the division of the house by the insolence of the soldiery, some came to me, and desired me that I would go to the house; I was then at my chamber at Lincoln's-Inn; I forbore a week and more; said I, I do not expect to be admitted, for they look upon me as another person; said they, if you will go you shall have no contradiction; I went, and went in; when I was in, the first business that came was the business of trial upon the king, and it was put on me to be chairman for bringing in this act for trial; I did not know how to contradict that power or authority, (be it what it will,) but I must obey; (I fear my ruin will follow it, in that respect) my lord, when I came there I was forced to run throughout what they imposed upon me.—Having seen me I could not shrink from them for fear of my own destruction, and thereupon I did go in, and did that which I have confessed to your lordships, not out of any malignity to his majesty, I never had any disrespect to him in my life; my lord, I did not know which way to be safe in any thing, without doors was misery, within doors was mischief. I do appeal to all that had any thing to do with me, that I never did any wrong to any that was of the king's party, but helped them as I was able. My lord, when the government was thus tossed, and turned, and tumbled, and I know not what, and the secluded members came into the house, I knew not what to do in that case neither. As soon as this parliament had declared the Treaty, which was the 8th of May, the 9th of May I appeared before the right honourable the Lord Mayor of London, and did claim the benefit of his majesty's gracious Declaration, and to become a loyal subject, as in my heart I always was; and my Lord Mayor being there, I hope he will testify that as soon as I heard of the Proclamation, I rendered myself according to the Proclamation; my lord, this hath been the carriage of me, being always under fear and force; I refer myself to your lordships.

*Simon Meyne.* When I was last here, my lord, that I did then speak Not Guilty, was not as to the matter of fact, but my conscience telling of me that I had no malice or ill intention

to his majesty, that was the reason. For matter of fact I shall acknowledge what I have done, and lie at his majesty's feet for mercy. I am an ignorant weak man in the law, I will confess the fact.

*Counsel.* Did you sign the warrant for summing that court? And did you sign the warrant for execution of the king?

*Meyne.* I did sit in court.

*Counsel.* Did you sign the warrant for execution?

*Meyne.* My lord, I knew not of the king's bringing up, I never was at any committee.

*Counsel.* We do not ask you that; look upon the warrant, and see if your hand and seal be not to it.

*Meyne.* My lord, it is my hand.

*Counsel.* Then, my lord, we have done.

*Meyne.* My lord, I acknowledge it is my hand, by what importunity it may be known to some here; I was very unwilling to it; I was told, what fear was there when forty were there before, and twenty was of the *Quorum*? I was thereupon drawn in to set my hand to it. My lord, I never plotted nor contrived the business. There was a gentleman that told me, if I did offer to speak in the house, (and plucked me down by the coat) and he told me I should be sequestered as a delinquent; (the name of this person I shall omit; saith he, you will rather lose your estate than take away the king's life. I leave it with you.

*James Temple.* At the last time I pleaded to the Indictment Not Guilty, but I shall now desire to see my hand, and if it be my hand I must confess all circumstances must follow. [The Warrants being shewed him,] I do acknowledge it is my hand to both; I never did consult concerning the Court.

*Counsel.* There are some worse than he, but he is bad enough.

*James Temple.* I refer myself to the king and parliament; [and presented a Petition, which was received by the Court.]

*Peter Temple.* When I was here the last time I pleaded Not Guilty, the reason was, because there are divers things in the Indictment that my conscience tells me I am Not Guilty of; for I had not a malicious or traitorous heart against the king. To save your lordship's time I will confess what I am Guilty of: I was in the Court, sat there; if I see my hand I shall confess it.

*Counsel.* Were you there when Sentence was given?

*Temple.* Yes, Sir.

*Counsel.* Shew him the Warrants, [which being shewed him] I acknowledge they are my hand, and refer it to your lordships.

*Counsel.* Mr. Waite, you heard the charge read against you, what say you to it?

*Thomas Waite.* Truly, my lord, when I was here last I pleaded Not Guilty; I humbly desired then your lordships to hear me a word or two. You promised me then I should be heard; I shall desire to speak for myself.

*L. C. Baron.* God forbid but you should.

VOL. Y.

*Mr. Sol. Gen.* By your lordship's favour we must speak first; if he will confess the fact he may speak what he will. Did you sit in the Court?

*Waite.* Yes.

*Counsel.* The day of Sentence?

*Waite.* Yes.

*Counsel.* Is your hand to the warrant for execution?

*Waite.* I know not; pray let me see it, [it was shewed him]. My lord, I confess it is like my hand, but I do not remember it.

*Counsel.* If you do not acknowledge it, it will be proved.

*Waite.* Truly, my lord, I do believe it is my hand.

*Counsel.* Then the Jury will not doubt it.

*Waite.* But I desire to be heard. I am loth to trouble you much; I will tell you how I was brought into this business. My lord, I was a member of that house that erected this court when the treaty was in the Isle of Wight. Immediately after the army came up I was utterly against that act in the house. When the army came up to purge the house I was much troubled at it; I desired to know the charge they had against them. Two or three days after I did move, and there were other gentlemen that did move, to know what charge there was. They sent word we should have a charge in due time; we sent, and none came, but said we should have it in due time; I went to those worthy gentlemen to see them in prison, and seeing nothing would be done, I took my leave, and made account to see them no more, and went down into the country to Leicestershire; I was sent for up several times; I would not come with threats upon pain of sequestration. My lords, there were petitions going up and down the country, for bringing the king to that business, which was against my conscience. I went to Rutlandshire, I heard there were some things working there; I used my interest, and I thank God I stopped it; I came then to London when all these things were destroyed, I came to London the day before the sentence was given; I went to the house, (thought nothing) some were sent to the Tower, and I was sent for to the house, and my name was in the act unknown to me; but one sent a note in my lord Gray's name, that he would speak with me. I went to him and I said, my lord, what would you do with me? Saith he, I did not send for you; thereupon Cromwell and Ireton laid hold on me; said they, we sent for you, you are one of the High Court; no, said I, not I, my judgment is against it; they carried me to the Court. When the king desired to speak with his parliament, I rising up, one told me I must not be heard, for the president was to give judgment, and said, there was an order that none should speak in Court. Mr. Downes did move, and they did adjourn the Court, and I was glad I got out; Cromwell laughed, and smiled, and jeered in the Court of Wards. I hope your lordship will be pleased to consider

I was no contriver, no soldier that put the force upon the house that erected the Court, none of the lawmakers, or did any thing maliciously against the king. My lord, I was looked upon with an evil eye for regarding the king's friends in the country; Gray told me the king would not die: I hope he will not, said I: the next day, on Monday, I went to the house, they were labouring to get hands for his execution at the door; I refused and went into the house; saith Cromwell, those that are gone in shall set their hands, I will have their hands now. That night I went to the lord Gray's, and he said, I am afraid they will put him to death. I said so also. My lord, I have been a great sufferer. I was drawn in, trepanned into it, since being a friend to the king's friends, I am almost ruined in my estate; I beseech your lordships make the best interpretation. I hope you will believe I was no contriver; I humbly lay hold on the king's mercy and favour. I came in upon the proclamation; I pray this honourable Court will prefer my petition to the king, and both houses of parliament: [which the Court then received.]

*William Heveningham.* My lord, in 1618 we were under a force, under the tyranny of an army; they were our masters; for a malicious and traitorous heart I had not. I do absolutely deny the signing the warrant for execution of court, and also that warrant for execution of the king; at the time of sealing I had that courage and boldness that I protested against it.

*Counsel.* We do not question him for that, but for sitting in the High Court of Justice, and that upon the day of the sentence; do you deny that?

*Heveningham.* My Lord, I cannot say positively?

*Counsel.* If you deny the matter of fact, it must be proved.

*Heveningham.* My lord, I cannot say positively, but it may be I might.

*Counsel.* Either say positively you did, or else let the witnesses be called.

*Heveningham.* Truly, my lord, I think I did; but my after-actions—

*L. C. Baron.* Mr. Heveningham, that shall be considered.

*Counsel.* My Lord, to sit upon the day of sentence was high-treason in itself, and is an evidence of compassing and imagining the king's death.

*Heveningham.* I shall lay hold of the declaration; I came in upon the proclamation; I pray your lordships to intercede for me to the king and both houses of parliament; I pray the mercy of this court.

*L. C. Baron.* You of the jury, they have all confessed, and therefore you may go together.

*Simon Meyne.* My lords, I have forgot my petition; it is at my lodging, I desire I may send it at night.

John Downes and Peter Temple prayed the like favour.

*L. C. Baron.* Do, send them, they shall be received.

*The Jury* having consulted together a certain time, they went to their places.

*Clerk.* Gentlemen, are you agreed of your verdict?

*Jury.* Yes.

*Clerk.* Who shall say for you?

*Jury.* Our fore-man.

*Clerk.* John Downes, hold up thy hand, look upon the prisoner; how say you? Is he guilty of High-Treason whereof he stands indicted, and hath been arraigned? Or Not Guilty?

*Fore-man.* Guilty.

*Clerk.* Look to him, keeper. What goods and chattels, &c.

*Fore-man.* None to our knowledge.—And the like verdicts at the same time passed in the same manner against Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, Thomas Waite, and William Heveningham.

*Potter.* I hope I may be freed from irons, I am in pain, and a man of bulk.

*L. C. Baron.* We can give no order in it, we must leave it to the sheriff.

*Potter.* I beg it of you, my lord.

*L. C. Baron.* We must leave it to the sheriff. Mr. Heveningham, you must withdraw from the bar.

*Clerk.* Officer, bring down Waller, Fleetwood, Hacker, Axtell, Hulet, Pennington, Marten, Millington, Tichburn, Roe, Lilburne, Smith, and Harvey, and set them to the bar. Which was done accordingly.

*Clerk.* Hardress Waller, hold up thy hand Thou hast been indicted, and found guilty of high-treason, what canst thou say why judgment should not pass on thee to die according to law?

*Waller.* My lords, I am now, it seems, convicted by law, and so adjudged: your lordships the other day on my desire told me I might have liberty to speak upon my trial, I must now beg the like upon a condemned person.

*L. C. Baron.* You are convicted, not condemned.

*Waller.* My lords, I was the first that pleaded Guilty, I bless God that he gave me a heart to do it, I find most peace in the doing it: and since there is nothing left but hopes of mercy, I humbly submit it to your lordships to hear me in this sad condition, that that may make me seem more capable of mercy. I have, my lords, been so unhappy to have been transplanted out of my country these thirty years. I have been but once these eleven years in England, this must needs make me a stranger.

*L. C. Baron.* I must not hinder you, because it is for mercy that you plead; but consider with yourself whether it will not be better to give it in a petition: I leave it to you, we can do nothing in point of mercy but judgment.

*Waller.* Only this (my lord), whether I am not the more capable of your mercy.

*L. C. Baron.* That you may understand it, the act of indemnity of parliament hath ex-

cepted you; yet upon some qualifications; we are to proceed according to law, that is, to go to conviction and judgment. The act says, that after judgment there shall be no execution, but that it shall be suspended till a further act of parliament to be passed for that purpose; so that in the mean time we are to proceed no further than judgment. That which concerns mercy is referred to another place. If you please to say any thing to satisfy us, or to go by way of petition, it must be left to you, but what you say for mercy is nothing to us.

*Waller.* I humbly thank your lordship for this clear and noble dealing, and withal, I would beg that these people that are witnesses of my shame and guilt, may know that it was a force and temptation upon me; I shall not insist much, I have said that I did plead guilty, which was most safe to my own conscience, yet I should make it appear that I did appear more to preserve the king from trial and sentence than any other.

*Lord Finch.* Sir Haddress Waller, I have heard of late of your sorrow, which I was glad to hear of, because you are my kinsman, both by your father and mother's side, and also my country-man; I was glad to hear of your great penitence for that horrid crime, and I would have been glad to have seen it now; advise with yourself, whether you do yourself any good in speaking to extenuate, when you know there is no man against whom there are such circumstances of aggravation as against you; consider whether a public penitence would not be more proper.

*Waller.* I beseech you report me both to his majesty and parliament, and receive me into your grace, as being penitent, truly penitent: to say so now were a small thing, for the fear of the punishment may procure it; but I have been more penitent when no eye hath seen me but God; when I never imagined to be questioned for this sin, then my heart hath yearned in the business; but I shall not trouble your lordships. God holds forth mercy, his majesty holds forth mercy, the parliament holds forth mercy. My lord, let me say something to you (though it be but a word), of the violence and force of temptation; you may have been under it, or may come to it; Christ himself was under it; we find that faithful Abraham, by the power of a temptation, delivered up his wife to commit adultery, which scarce a heathen would; we find that valiant Peter denied his master; righteous Lot committed incest. None abhors this fact more than I do; I have done it so long beforehand, I need not be afraid to speak it in the face of the judge of all men; that is all I shall say. I rendered myself three times; I had as much opportunity to make my escape as any person whatsoever.

*L. C. Baron.* It is understood, sir Haddress.

*Clerk.* Isaac Pennington, hold up thy hand. Thou art in the same condition as the former, what canst thou say for thyself why judgment, &c.?

*Pennington.* My lord, I have said what I have to say, and shall not trouble your lordships any further.

*Clerk.* Henry Marten, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Marten.* I claim the benefit of the Proclamation.

*Clerk.* Gilbert Millington, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Millington.* I shall not trouble you with long discourses; I shall say no more but this, I have made a public resentment of my sorrow for this offence formerly, and many times. I shall now desire no more, but humbly beg that I may have the benefit of the Proclamation, and pray his majesty's most gracious pardon.

*Clerk.* Robert Tichburn, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Tichburn.* My lord, I will not trouble you with any repetitions, I have made my humble request before, I leave it with you.

*Clerk.* Owen Roe, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Roe.* My lord, I have no more to say than I said before.

*Clerk.* Robert Lilburn, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Lilburn.* I shall refer myself without further trouble to the court; my lord, I beg the benefit of the Proclamation.

*Clerk.* Thomas Waite, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Waite.* I can declare no more than what I have already: my heart is sorry for what I have done: I beg the benefit of the Proclamation.

*Clerk.* Edmund Harvey, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Harvey.* My lords, I have no more than what I said before.

*Clerk.* John Downes, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Downes.* I shall not trouble you any further; I shall desire the benefit of his majesty's Proclamation.

*Clerk.* Vincent Potter, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Potter.* My lord, I do not know law, I understand it not; I am not in a condition to speak what I would have willingly spoke: I desire that God would have mercy, and I look for mercy from God [and wept].

*Clerk.* Augustine Garland, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Garland.* I humbly desire your lordship's charitable opinion of me: notwithstanding

what has been objected against me, I humbly refer myself to the parliament.

*Clerk.* George Fleetwood, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Fleetwood.* My lord, I have already confessed the fact, I wish I could express my sorrow [and wept.]

*Clerk.* James Temple, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*James Temple.* My lord, I can say no more, I beg the benefit of the Proclamation.

*Clerk.* Simon Meyne, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Meyne.* I have told you before, my lord, I have no more.

*Clerk.* Peter Temple, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Peter Temple.* My lord, I came in upon the Proclamation, and I humbly beg the benefit of it.

*Clerk.* Francis Hacker, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Hacker.* My lord, I have nothing to say but what has been before your lordships.

*Clerk.* Daniel Axtell, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why judgment, &c.?

*Axtell.* May it please your lordships, my case differs from the rest of the gentlemen.

*L. C. Baron.* I would be loth to hinder you, but I must tell you that what hath been over-ruled must not be spoke to; if you have any thing against the Indictment matter of law, go on.

*Axtell.* I have one thing more that I did not then mention.

*L. C. Baron.* If it tend not as an exception to the Indictment, it is not to be heard.

*Axtell.* My lord, then I shall apply myself to that point; I humbly conceive, my lord, that my overt-acts were not sufficiently set down in the Indictment, as might be sufficient in law to attain me of high-treason; I do not remember that the Overt-act that was applied to me in evidence was charged in the Indictment; I have duly that exception, because of the insufficiency of that point. In the next place, my lord, there is not the right additions to my name; there are many pious, of the same name; I am arraigned by the name of Daniel Axtell of Westminster, in the county of Middlesex, gentleman. I think none knew me to live there, and much less there.

*L. C. Baron.* I would not interrupt you; this is past; you should have made your exception to that as master Marten did before concerning his name; that should have been first done: you have appeared and pleaded to that name, and it was, 'late of Westminster.'

*Axtell.* My lord, I have this to speak in arrest of judgment, that the Indictment being grounded upon that statute of the 25th of Edw.

the 3d, it is either mistaken, or not pursued; my lords, I did yesterday give you the judgment of the Lords and Commons concerning the statute in relation to my case; I say the statute was mistaken, or not pursued.

*L. C. Baron.* That was offered before, Sir, as to the matter of it.

*Axtell.* My lord, I think not, I am mistaken if it were.

*L. C. Baron.* Then open it.

*Axtell.* My lord, I do not find in that statute that words are an Overt-act, words only.

*L. C. Baron.* This was over-ruled. The things that you objected were these, that there is not any Overt-act that is laid that could be applicable to your case; if it were not particularly applicable (you are found guilty by the jury), it would be nothing: But there is an Overt-act, you were present at the Court, beating the soldiers, sending for an executioner: but for words, if any man should say, here is the king, go and kill him, this is treason; but you were guilty in all, according to law. You being there, and doing this, you were not guilty only of the words, but of all that was done; there is none but principals in treason. What we say and do to you we well know we must answer before God Almighty for it.

*Axtell.* I have but one word more; truly I do appeal to God, before whom I shall have another trial, I do not find myself guilty either of consulting, contriving, or having a hand in the death of the king, I am innocent, and I pray God that my innocent blood—

*L. C. Baron.* Pray, Sir—

*Axtell.* May not cry—

*L. C. Baron.* You are now to speak in arrest of judgment.

*Axtell.* I have no more; I pray your lordship's favour and mercy to me.

*Clerk.* William Hulet alias Howlet, hold up thy hand. Thou art in the same condition, what canst thou say for thyself why, &c.?

*Hulet.* Truly, my lord, I have little further to say; if you had been pleased to give me further time I should have cleared myself. I call God above to witness upon this account that I am as clear as any man; I submit to the mercy of the Court.

*L. C. Baron.* For that, I do believe (but cannot positively say it), that at your request (notwithstanding that judgment will pass against you) there may be some time till his majesty's pleasure be known before any execution will be upon that judgment against you; in the mean time we must proceed according to law and justice.

Proclamation for Silence whilst Judgment is given.

The LORD CHIEF BARON'S SPEECH before the Sentence pronounced against the fore-named prisoners found Guilty.

"You that are prisoners at the bar, you stand here in several capacities, yet all of you persons convicted of the detestable and exe-

crable murder of our sovereign lord king Charles the 1st of blessed memory. Mistake me not, I do not say that you are all of you guilty of executing the fact, but in law, and in conscience (*pro tanto* though not *pro toto*), you are guilty of it, in that you prepared the way and means to it, in that you brought his head to the block, though you did not cut it off. You are here in three sorts; and I must apply my words accordingly; and truly I do it with as much sorrow of heart as you have, many of you being persons of liberal education, great parts; I say you are of three sorts. There are some of you, that, though the judgment of death is to pass against you, by his majesty's grace and favour, and the mercy under him, of the two houses of parliament, execution is to be suspended until another act of parliament shall pass to that purpose, that is, all of you but three; for these three, the one of them that was last called, William Heveningham, he is in another capacity too; for I presume some time will be given to him to consider of something relating to him, before any order will be given for his execution; there are two others of you, and that is Daniel Axtell and Francis Hacker; and for you, as it yet stands before us, there is no mercy, there is no room for it: But though you be in those several classes, yet what I shall say will concern you all, because I do not know how it may fall with you; none of us knows how soon we may come to our deaths, some (probably) sooner than others; all must come to it: You are now before the tribunal of man, but that is for judgment for your offence here; but there is another judgment hereafter, and a tribunal before which both you and we must stand, every man here, and we must receive according to our work; those that have done ignorantly, by a serious and unfeigned repentance God Almighty may shew mercy unto them. He hath reserved mercy even for the greatest offenders. St. Paul, himself, when he persecuted Christ ignorantly, upon his repentance he found mercy; those of you that are not yet convicted in your conscience of the foulness of this horrid fact, look into your consciences a little more, and see if it be not a great judgment for your former offence, that you should be given over to a reprobate sense; let me tell you, a seared conscience, a bold confidence, not upon good grounds, is so far from securing the conscience, it may stifle, perhaps, the mouth of conscience, but it will rise up more in judgment against you. Here you have made your defence, and I do not blame you for it; life is precious, but remember the thoughts of your hearts are open: whether you did it ignorantly, covetously, or to get the government into your own hands, that I am not able to search into, God and you only know that; give me leave to say something, perhaps I have repeated it by parts before: God is my witness what I speak I speak from mine own conscience, and that is this, gentlemen, because I saw it stuck with some of you,

that is, that whatsoever the case was, that by the laws of these nations, the fundamental laws, there could be any coercive power over your king. I speak it again, because I would as near as I could speak the whole truth, and would not mislead any man in such a case: remember that no power, no person, no community or body of men (not the people, either collectively or representatively), have any coercive power over the person of the king, by the fundamental laws; for that, gentlemen, I shall begin to show you that which all of you might remember, that is, your oaths of allegiance and supremacy, and to add to this that obligation which all this whole nation did oblige themselves to, by the parliament, without question, then rightly represented, and in being, the first of king James; whereby to shew you, that not only persons, but the body politic of the nations, not only the single members, but the members in both houses of parliament, were loyal and obedient subjects to the king, their head, even to yield a natural and humble obedience and allegiance. I told you the act of 1 king James, when king James came first into England, 'We the lords and commons representing the whole people of this nation,' the very words of the act are so, 1 Jac. ch. 1, 'representing the whole body of the nation, do acknowledge an humble and natural hege obedience to the king as supreme, his heirs and successors; and in the name of themselves, and all the people, humbly submit themselves until the last drop of their blood be spent in defence of the king and his royal posterity;' and therefore they did oblige themselves and all the people of England, as far as I could represent them, the words are more full than I can express them, and indeed it is so dark I cannot read them: They did acknowledge to be bound to him and his imperial crown. Remember these were not words of compliment; you shall find that they all of them, and so did so many of you as are members of parliament, yea, all of you, before you came into the house of commons, did take the oath of allegiance, which was made after this recognition, the third and fourth of king James, or otherwise were not to be members. What was that oath of allegiance that you took? It was, that you should defend the king, his person (that is in 3 Jac. ch. 4), his crown and dignity: What was it? Not only against the pope's power to depose, but the words are 'or otherwise:' look into the act, and reflect upon your own conscience, and you shall find that all did swear to defend the king, his crown and dignity, and there it is called 'Imperial Crown.' I would have you lay this to heart, and see how far you have kept this oath: Gentlemen, in the Oath of Supremacy, which you all took, therein you did further acknowledge that the king was the only supreme governor of this realm: Mark the words, I will repeat them that you may lay it to heart; you that have more time to apply it to your fact; and you that have less time, for ought I know, you

have reason to consider what I have to say: you swore then, that the king by the oath of supremacy, which all of you have taken, or ought to have taken; if any of you have not taken it, yet notwithstanding you are not absolved from the obligation of it; but most of you did take it; there you did swear that the king is the only supreme governor of this realm; and you swear there that you would defend all jurisdictions, privileges, pre-eminences, and authorities, granted or belonging to the king's highness, his heirs, and successors, or united and annexed unto the imperial crown of this realm. For the first, if the king be supreme, then there is no co-ordination; 'Non habet majorem, non habet parem'; that word 'Imperial Crown,' is at least in nine or ten several statutes; it is the very word in this act that was made lately in pursuance of former acts concerning judicial proceedings. And so in the time of king Charles, they acknowledged him to be their liege sovereign; I say that word 'supreme,' and so the word 'imperial crown,' is in the 1st of queen Eliz., the 3d and 8th of Eliz., the 24th of Hen. 8, ch. 12, there it is said this kingdom is an 'imperial crown, subject to none but God Almighty.' Before these times you shall find in the 16 of Richard 2, the Statute of Praemunire, the crown of England subject to God alone. I will go higher, William Rufus (some of you are historians, and you shall find the same in Eadmerus, and also in Matthew Paris, shortly after William Rufus his time), when he wrote to the pope he challenged, and had the same liberty in this kingdom of England, as the emperor had in his empire; (mistake me not, I speak only as to the person of the king) I do not meddle of rights between the king and subjects, or subject and subject; you see in this case concerning the death of his majesty's dear father, and our blessed sovereign, of happy memory, he doth not judge himself, but according to law; that which I assert is as to the person of the king, which was the privilege of emperors, as to their personal privileges; if he had offended, and committed an offence, he was only accountable to God himself. I will come back to what I have said; you swore to be faithful to the king as supreme. The king of Poland hath a Crown, but at his oath of coronation it is conditioned with the people, that if he shall not govern according to such and such rules they shall be freed from their homage and allegiance. But it differs with our king, for he was a king before oath. The king takes his oath, but not upon any condition; this I shew you, to let you see that we have no coercive power against the king. The king of England was anointed with oil at his coronation, which was to shew that absolute power (I do not say of government), but of being accountable to God for what he did: the law saith, 'The king doth no injury to any man;' not but that the king may have the imbecilities and infirmities of other men, but the king in his single person can do no wrong;

but if the king command a man to beat me, or to disseize me of my land, I have my remedy against the man, though not against the king. The law in all cases preserves the person of the king to be untouched; but what is done by his ministers unlawfully, there is a remedy against his ministers for it; but in this case, when you come to the person of the king, what do our law books say he is? They call it, *Caput reipublice, salus populi*, the Lieutenant of God; and let me tell you, there was never such a blow given to the church of England, and the Protestant religion. There was a case, and that of the Spencers, you shall find in the 7th Report of the lord Coke, in Calvin's case, that homage is due to the king in his politic capacity; and then they made this damnable inference, that therefore if the king did not demean himself as he ought, that he should be reformed, *per asperitatem*, by asperity, sharpness, or imprisonment; but these were condemned by two acts of parliament in print, that they could not do that even in that case; one was called the Banishment of Hugh Spencer; and the other is in 1 Edward 3, upon the roll. My masters, in the first of Henry the 7th you shall find it in the printed Seven Books, he saith, 'That as to the regality of his crown, he is immediately subject unto God.' Mark the doctrine of the church of England, gentlemen; I do not know with what spirit of equivocation any man can take that Oath of Supremacy: you shall find in the Articles of the Church of England, the last but one or two; it is that Article which sets forth the Doctrine of the Church of England; they say, That the queen, and so the king, hath the supreme power in this realm, and hath the chief government over all the estates of the realm; the very words are so; this was shortly after making the act; the Articles were in 1562, and she came in 1558, or 1559: it is to shew you the king hath the chief government over all the estates within the nation; and if you look upon it, you shall find it was not only the judgment of the church, but of the parliament at the same time. They did confirm this Article so far, that they appointed that no man should take, or be capable of a living, but those that had taken that oath. God forgive those ministers that went against it. The queen, and the church, were willing that these should be put into Latin, that all the world might see the confession of the church of England, and of the people of England; you may read it in Camden: I have told you how, and wherein, the chief power consisted; not in respect the king could do what he would; no, the emperors themselves did not challenge that; but this they challenge by it, that they were not accountable to man for what they did: no man ought to touch the person of the king; I press it to you in the point of conscience; you see in the scripture, in Psalm li. the Psalm of Mercy, wherein we ask pardon of God of our great offences; I think none of you in this condition but will join in this; you know the adultery and murder that David committed, this peni-



tential Psalm was made for that; what doth he say? 'Against thee, thee only, have I sinned,' &c. 'Tibi soli peccavi, Domine;' not because he had not sinned against man, for it is plain he had sinned both against Bethsheba and Uriah too; but because he was not liable to the tribunal of man, he was not bound or accountable to any man upon earth. And now, my masters, I beseech you consider, that some of you for ought I know suddenly, and some of you for ought I know not long after, all of us, we do not know how soon, must come to make a right account to God of what we have done. After this life you enter into an eternity, an eternity, an eternity of happiness, or of woe; God Almighty is merciful to those that are truly penitent; the thief upon the cross, and to all that are of a penitent heart. You are persons of education, do not you go on in an obstinate perverse course, for shame of men, even this shame which you now have, and which you may have when you come to die; a sanctified use may be made of it: you pay to God some part of that punishment which you owe to him for your sins. I have no more to say, but the next thing I have to do, is to give the Sentence, the Judgment, which truly I do with as unwilling a heart as you do receive it. You prisoners at the bar, the Judgment of the Court is this, and the Court doth award, 'That you be led back to the place from whence you came, and from thence to be drawn upon an hurdle to the place of execution, and there you shall be hanged by the neck, and being alive shall be cut down, and your privy members be cut off, your entrails to be taken out of your bodies, and (you living) the same to be burnt before your eyes, and your heads to be cut off, your bodies to be divided into four quarters, and heads and quarters to be disposed of at the pleasure of the king's majesty, and the Lord have mercy upon your souls.'"

Court adjourned till Friday morning seven o'clock.

Friday, October 19, 1660.

Set William Heveningham to the bar.

Serjeant Keeling. May it please your lordships, the prisoner at the bar, William Heveningham, hath been indicted for high treason, for compassing and imagining the death of the late king, of blessed memory; he has been tried, the jury has found him guilty, I do humbly move your lordships in the behalf of the king that you will proceed to Judgment.

Clerk. William Heveningham, hold up thy hand. What canst thou say for thyself why Judgment, &c.

Heveningham. My lords, I have nothing more to say than I said formerly, only I plead the benefit of the Proclamation, and cast myself upon the mercy of our most gracious sovereign, and desire your lordships to be mediators on my behalf.

L. C. Baron. By the Act of Indemnity of which you claim the benefit, and we ought to

take notice of it) we are to proceed to Judgment, but no execution of this Judgment is to be until by another act of parliament, by consent of the king, it shall be ordered. And therefore I need not speak any more of that, or any exhortation to prepare yourself for death; our work is only to give Judgment. The Judgment of the Court is this, and the Court doth award, that you the prisoner at the bar be led back to, &c. and the Lord have mercy upon your soul.

Of these, ten only were executed, viz.

Thomas Harrison,	Gregory Clements,
John Carew,	John Jones,
John Cook,	Daniel Axtell,
Thomas Scot,	Francis Hacker,
Hugh Peters,	Adrian Scroop.

Whose Behaviour at their Execution is thus related by their several friends:

Some Particulars of the subsequent Behaviour and of the EXECUTION of Major-General HARRISON, the 13th day of October, 1660, at Charing-Cross. \*

The day of his coming to Newgate from the Tower, at night he sent his wife word that that day was to him as his wedding-day.—When the Sentence was pronounced, he said, Whom men have judged God doth not condemn, blessed be the name of the Lord. And as he was carried away from the Court through the crowd, the people shouted. And he cried, Good is the Lord for all this; I have no cause to be ashamed of the cause that I have been engaged in. Some friends asked him how he did, he answered, Very well; and cannot be in a better condition if I had the desires of my heart; we must be willing to receive hard things from the hands of our Father, as well as easy things: When he came to Newgate there was chains put upon his feet; and he said Welcome, welcome, Oh this is nothing to what Christ hath undergone for me; this is out of his great loving kindness and faithfulness, and my God is all-sufficient in all conditions. And also soon after his coming into the dungeon in order to his execution, a woman belonging to the gaol, who was sent to make clean the room, and to make a fire for him, was asked when she came out by divers people (whereof some were scoffers) how the major general behaved himself, and what he said. To which she answered, she knew not what he had done to deserve to be there, but sure she was that he was a good man, and that never such a man was there before, for he was full of God, there was nothing but God in his mouth; so that it would have done any one good to have been near him, or with him; and his discourse and frame of heart would melt the hardest of their hearts.

\* See the 'Trial' of Brewster, Dover, and Brookes, for publishing the Speeches and Prayers of these people, A. D. 1663, *infra*.

Sometime after he was put into the hold, three ministers of the city were sent by the sheriff to discourse with him. And their discourse was to endeavour to convince him, 1. Of being guilty of the king's blood. 2. Of Mr. Love's death. 3. Of breaking the old parliament. 4. Of being loose in family duties, and the observation of the Lord's day. 5. Of the justness of this thing that was upon him by reason of his iniquity. To which he answered, 1. As to the blood of the king, I have not in the least any guilt lying upon me; for I have many a time sought the Lord with tears to know if I have done amiss in it, but was rather confirmed that the thing was more of God than of men; And besides what I did, I did by authority of parliament, which was then the only lawful authority, for God owned it by pleading their cause, and fighting their battles for them; the Lord's people owned it by rejoicing in it and praying for it; the generality of people both in England, Scotland and Ireland owned it by yielding obedience to it; Foreign Princes owned it by sending their Embassadors, therefore it was rather the act of the parliament, than ours that were their servants. He declared that he was very tender of the king, inasmuch that the king himself did confess that he found him not such a person as he was represented to them (when he was brought out of the Isle of Wight) and that he had some skill in faces, so that if he had but seen his face before, he should not have harboured such hard thoughts of him. 2. As to Mr. Love's death, I was in Scotland when he was condemned, and had no hand in it in the least. They desired to know if he did not say then, That if a godly man so transgress as to bring himself under the condemnation of the law, it were not a just thing for him to suffer for his sin; he told them that he did not remember that he did say so, but then said, if a godly man did so transgress a righteous law, he ought to suffer as another man. 3. The breaking of the parliament was the act and design of general Cromwell, for I did know nothing of it; that morning before it was done he called me to go along with him to the house, and after he had brought all into disorder, I went to the Speaker and told him; Sir, seeing things brought to this pass it is not requisite for you to stay there: he answered he would not come down unless he was pulled out; Sir, said I, I will lend you my hand, and he putting his hand into mine came down without any pulling, so that I did not pull him. Indeed, afterwards I was glad the thing was done, for I did see they did intend to perpetuate themselves without doing those desirable things, which were expected and longed for by the Lord's people; and apprehending that God had done this work by them, and that he had some more worthy persons to come upon the stage; the Lord is my witness, that I had no self-rend in that action, but it was out of the integrity of my heart as to the Lord. Afterwards when Cromwell and his party did set

up themselves in their room, I abhorred them and their ways, and suffered imprisonment by reason I would not join with them in that iniquity and go against my conscience; there is nothing of this also that lies as guilt upon me. —4. Concerning family duties, and the observation of the Lord's day, there stands my servant, let him speak to it; for he hath lived with me about this eight years. The servant answered, That those reports were very false; for his master was a man in a manner wholly devoted to religious exercises, very frequent in prayer, and diligent in expounding the Scriptures, to the great comfort and consolation of his whole family, and that he was very zealous in observing the Lord's day.—5. He said that the Lord's spirit did witness with his spirit, That all his sins were done away by Jesus Christ, that he had peace with God, and was assured that this was not come upon him for his iniquity.

They discoursed of many other things, but these were the chiefest, so far as one then present could afterwards remember. He parted very sweetly and lovingly with the said ministers, and they told him that they came then by the desire of the sheriff; but that they would willingly come again upon a Christian account. Many friends came to visit him whilst he was in that place, and found him full of the joy of the Lord; so that some apprehended he was clothed with the spirit of the Lord.

The Sheriff came that morning that he was to die, and told him, that in half an hour he must be gone; he answered, that he was ready, and would not have him stay at all on his account. But the sheriff left him to stay a little longer, and in the mean time, he was longing for the sheriff's coming, and as his friends judged he was in haste to be gone, and said, He was going about a great work for the Lord that day; and that his support was, that his sufferings were upon the account of Jchoval, the Lord of Hosts. He said, he looked upon this as a clear answer of his prayers; for many a time, said he, have I begged of the Lord, That if he had any hard thing, any reproachful work, or contemptible service to be done by his people, That I should be employed in it; And now blessed be the name of God, who accounteth me worthy to be put upon this service for my Lord Christ: Oh, this is nothing to what Christ suffered for me!

He parted with his wife and friends with great joy and cheerfulness, as he did use to do when going some journey, or about some service for the Lord. He told his wife he had nothing to leave her but his Bible; but that he was assured that God would make up all her losses in due time; and desired, that those that did love him, should manifest their love in being loving and tender to his dear wife.

The Sheriff commanding the Keeper to acquaint Mr. Harrison he must go to suffer, the Keeper came forth, and returned answer, That

he was ready when he pleased: Then the Sheriff commanded the Keeper to fetch him forth; so he came forth immediately, sooner than was expected; (running down the stairs with a smiling countenance;) by reason of his sudden coming, the door (that he was to go up a pair of stairs at) was not opened, which occasioned his stay in the Hall till the Keeper could be found; and there one Mrs. M. took him by the hand, and said, with a loud voice, 'Blessed be the great God of Hosts, that hath enabled you, and called you forth to bear your testimony; the God of all grace and peace be with you, and keep you faithful to the death, that you may receive a Crown of Life.' With that one of the officers pulled the woman away by the shoulder, saying, Away with this woman, she stands prating here. But the Major-General replied, Be not offended with her, she speaks Scripture-language: So they thrust her away from him, and would not permit any to speak more to him in that place.

Then he was carried into a room where the common prisoners were, and told them what a sad thing it was to be condemned to die, and to want the love and favour of God; but it is not so with me; for though I die, yet I know I shall live with Christ to all eternity, and this is out of the exceeding riches of the grace of God; for he it is that maketh the difference: For as I am in, myself, I am a base, vile, and nothing creature; but complete in him who is the head of all principalities and powers. Poor men! I wish you all as well as I do my own soul. Oh that you did but know Christ! his bowels yearn towards the greatest of sinners; his blood is sufficient to do away the deepest iniquity; he waiteth to be gracious, and is willing to receive all that come unto him: Oh therefore labour to come to Christ! your time in this world is short and uncertain; you are walking upon the brink of eternity, and are ready to drop in every moment; if you die without the fear of our God, you will be miserable for ever and ever; but if you come to know Christ to be yours, it will be your joy and happiness world without end. He then put his hands into his pocket and gave them some money, and wished them to take heed of sinning against the Lord. And from thence was carried upon the leads on the top of Newgate, so that he could see the greatest part of the city; he then said, 'The earth is the Lord's, and the fulness thereof, and there is nothing hid from his eyes.' From thence he was carried down two pair of stairs, where he was tied about the back, breast, and shoulders; he took the rope in his hand and said, 'Friends take notice that God gives me power to receive this with thanksgiving,' and he helped the sergeant to put on the rope. Then a friend came weeping to him to take her leave of him, he said, 'Hinder me not, for I am going about a work for my master.' Then looking about him, said, 'Sirs, it is easy to follow God when he makes a hedge about us, and makes liberal provision for us; but it is hard for us to

follow him in such a dispensation as this; and yet my Lord and Master is as sweet and glorious to me now, as he was in the time of my greatest prosperity.

He also said, This I can say for myself, 'That according to the light that God hath given me, I have served him and my country with integrity and uprightness of heart, not willingly nor wittingly wronging any.' But this I have done with much infirmity and weakness. One telling him, that he did not know how to understand the mind of God in such a dispensation as this: He said, 'Wait upon the Lord; for you know not what the Lord is leading to, and what the end of the Lord will be.'

After this, addressing himself to a gentleman, he said, 'I dare not, nor cannot be a pleaser of men.' A friend answered, It appeared so by your declining Cromwell's interest; which words he assented to, and further said, 'The manner of my speaking before the Court may seem strange to some; but my design was not to approve myself before men, but God; and what I said was according to my conscience.' And as the rope was tying on, he repeated Isaac's words to Abraham; 'Father, here is the wood, but where is the sacrifice?' and also said, 'If the Lord see good, he can provide another sacrifice, he can deliver those that are appointed to die; but his will be done, death is not terrible to me; yea, it is no more to me than a rush, I have learned to die long ago.' And was often heard to say, concerning the Lord's dispensation to him and his people, 'Shall not the Lord do with his own what it pleaseth him?' And so parting with his friend, went down stairs to the sledge, and asked which way must I sit? for I am not acquainted with this: 'Good is the Lord in all his ways.' Then he was carried away in the sledge, having a sweet smiling countenance, with his eyes and hands lifted up to heaven, his countenance never changing in all the way as he went to the place of execution, but was mighty cheerful to the astonishment of many. He called several times in the way, and spoke aloud, 'I go to suffer upon the account of the most glorious cause that ever was in the world.' As he was going to suffer, one intercession called to him and said, 'Where is your Good Old Cause?' He with a cheerful smile clapt his hand on his breast; and said, 'Here it is, and I am going to seal it with my blood.' And when he came to the sight of the gallows, he was transported with joy, and his servant asked him how he did; he answered, Never better in my life: His servant told him, Sir, here is a Crown of Glory ready prepared for you. O yes, said he, I see it. When he was taken off the sledge the hangman desired him to forgive him. I do forgive thee, said he, with all my heart, as it is a sin against me; and told him he wished him all happiness. And further said, Alas poor man, thou dost it ignorantly; he Lord grant that this sin may not be laid to thy charge! And putting his hand into his pocket, gave him all the money he had; and

so parting with his servant, hugging of him in his arms, he went up the ladder with an undaunted countenance; from whence he spake to the multitude as follows:

"Gentlemen, I did not expect to have spoken a word to you at this time; but seeing there is a silence commanded, I will speak something of the work God had in hand in our days. Many of you have been witnesses of the finger of God, that hath been seen amongst us of late years, in the deliverance of his people from their oppressors, and in bringing to judgment those that were guilty of the precious blood of the dear servants of the Lord. And how God did witness thereto by many wonderful and evident testimonies, as it were immediately from Heaven, insomuch that many of our enemies, who were persons of no mean quality, were forced to confess, That God was with us; And if God did but stand neuter, they should not value us: And therefore, seeing the finger of God hath been pleading this cause, I shall not need to speak much to it; In which work I with others were engaged; for the which, I do from my soul bless the name of God, who out of the exceeding riches of his grace accounted me worthy to be instrumental in so glorious a work; and though I am wrongfully charged with murder and bloodshed, yet I must tell you I have kept a good conscience both towards God, and towards man; I never had malice against any man, neither did I act maliciously towards any person, but as I judged them to be enemies to God and his people; and the Lord is my witness that I have done what I did out of the sincerity of my heart to the Lord. I bless God I have no guilt upon my conscience, but the spirit of God beareth witness that my actions are acceptable to the Lord, through Jesus Christ; though I have been compassed about with manifold infirmities, failings and imperfections in my holiest duties; but in this I have comfort and consolation, that I have peace with God, and do see all my sins washed away in the blood of my dear Saviour. And I do declare as before the Lord, that I would not be guilty wittingly, nor willingly, of the blood of the meekest son, no not for ten thousand worlds, much less of the blood of such as I am charged with.

"I have again and again besought the Lord with tears to make known his will and mind unto me concerning it, and to this day he hath rather confirmed me in the justice of it, and therefore I leave it to him, and to him I commit my ways; but some that were eminent in the work, did wickedly turn aside themselves, and to set up their nests on high, which caused great dishonour to the name of God, and the profession they had made. And the Lord knows I could have suffered more than this, rather than have fallen in with them in that iniquity, though I was offered what I would if I would have joined with them; my aim in all my proceedings was the glory of God, and the good of his people, and the welfare of the whole Commonwealth."

The People observing him to tremble in his hands and legs, he taking notice of it, said:

"Gentlemen, By reason of some scoffing that I do hear, I judge that some do think I am afraid to die, by the shaking I have in my hands and knees; I tell you, no, but it is by reason of much blood I have lost in the wars, and many wounds I have received in my body, which caused this shaking and weakness in my nerves; I have had it this twelve years; I speak this to the praise and glory of God; he hath carried me above the fear of death: and I value not my life, because I go to my Father, and am assured I shall take it up again.

"Gentlemen, Take notice, that for being instrumental in that cause and interest of the Son of God, which hath been pleaded amongst us, and which God hath witnessed: to my appeals and wonderful victories, I am brought to this place, to suffer death this day; and if I had ten thousand lives, I could freely and cheerfully lay them down all, to witness to this matter."

"Oh, what am I, poor worm, that I should be accounted worthy to suffer any thing for the sake of my Lord and Saviour Jesus Christ! I have gone joyfully and willingly, many a time, to lay down my life upon the account of Christ, but never with so much joy and freedom as at this time; I do not lay down my life by constraint, but willingly; for if I had been minded to have run away, I might have had many opportunities; but being so clear in the thing, I durst not turn my back, nor step a foot out of the way, by reason I had been engaged in the service of so glorious and great a God. However, men presume to call it by hard names; yet I believe, ere it be long, the Lord will make it known from heaven that there was more of God in it than men are now aware of."

[The Sheriff minding him of the shortness of time, if he had any thing to say to the people, he might.]

He said, "I do desire as from my own soul, that they and every one may fear the Lord, that they may consider their latter end, and so it may be well with them; and even for the worst of those that have been most malicious against me, from my soul, I would forgive them all so far as any thing concerns me; and so far as it concerns the cause and glory of God, I leave it for him to plead; and as for the cause of God, I am willing to justify it by my sufferings, according to the good pleasure of his will. I have been this morning, before I came hither, so hurried up and down stairs (the meaning whereof I knew not) that my spirits are almost spent; therefore you may not expect much from me.

"Oh the greatness of the love of God to such a poor, vile, and nothing creature as I am! What am I, that Jesus Christ should shed his heart's blood for me, that I might be happy to all eternity, that I might be made a Son of God, and an heir of Heaven! Oh, that Christ should undergo so great sufferings and reproaches for me! And should not I be willing

to lay down my life, and suffer reproaches for him that hath so loved me; Blessed be the name of God that I have a life to lose upon so glorious, and so honourable an account; [Then praying to himself, with tears; and having ended, the hang-man pulled down his cap; but he thrust it up again, saying,] I have one word more to the Lord's people, that desire to serve him with an upright heart; Let them not think hardly of any of the good ways of God for all this; for I have been near this seven years a suffering person, and have found the way of God to be a perfect way, his word a tied word, a buckler to them that trust in him, and will make known his glorious arm in the sight of all nations. And though we may suffer hard things, yet he hath a gracious end, and will make a good end for his own glory, and the good of his people; therefore be cheerful in the Lord your God, hold fast that which you have and be not afraid of suffering; for God will make hard and bitter things sweet and easy to all that trust in him: Keep close to the good confession you have made of Jesus Christ, and look to the recompence of reward; be not discouraged by reason of, the cloud that now is upon you; for the sun will shine, and God will give a testimony unto what he hath been a doing, in a short time.

"And now I desire to commit my concerns into the hands of my Lord and Saviour Jesus Christ, he that hath delivered himself for the chief of sinners; he that came into the world, was made flesh and was crucified; that hath loved me, and washed me from my sins in his own blood, and is risen again, sitting at the right hand of God, making intercession for me.

"And as for me, Oh! who am I, poor, base, vile worm, that God should deal thus by me? for this will make me come the sooner into his glory, and to inherit the kingdom, and that crown prepared for me? Oh, I have served a good Lord and Master, which hath helped me from my beginning to this day, and hath carried me through many difficulties, trials, straits, and temptations, and hath always been a very present help in time of trouble; he hath covered my head many times in the day of battle: By God I have leaped over a wall, by God I have run through a troop, and by my God I will go through this death, and he will make it easy to me. Now into thy hands, O Lord Jesus, I commit my spirit."

Then he was turned off, and was cut down, alive, for after his body was opened, he mounted himself, and gave the executioner a box on the ear\*.

Some Particulars of the subsequent BEHAVIOUR and of the EXECUTION of Mr. JOHN CAREW, the 15th day of October, 1660, at Charing-Cross.

When the first tidings of the adversary's in-

\* "This Sentence was so barbarously executed that he was cut down alive, and saw his bowels thrown into the fire." Ludlow.

tentions to seize and apprehend him (being then in Cornwall) came to his knowledge, he uttered these words or to this effect. That he had committed both his life and estate to the Lord; to save or destroy, as he thought meet; and therefore he would not by any means go out of the way, though provoked thereunto by several friends. After he was seized upon in the country, and coming up to London, he had a gracious presence of the Lord with him; sweetly supporting him in the sense of the love of Christ to his soul; and being persuaded, that the cause of his suffering from man was such, as he had no cause to be ashamed of; otherwise, the many reproaches and hard usage in the way to London had been sufficient to have troubled his spirit. In most towns where he came, the generality of the people reviling him, with such words as these: Hang him rogue, pistol him, said others, hang him up said some (at Salisbury) at the next sign-post without any further trouble. Look, said others, how he doth not alter his countenance; but we believe he will tremble when he comes to the ladder. This is the rogue will have no king but Jesus. Indeed, the rage of the people all the way was such, that had he not been endued with strength from on high, he could not have undergone the wicked and barbarous deportment and carriage of the giddy multitude which he was subjected to.

After he came to London, and had many opportunities of escape, if he had thought it meet (before he was sent to the Tower) yet he would not, knowing how much the name and glory of God was concerned in his faithful witness to the cause of Christ for which he was in bonds. And the truth is, his joy in the Lord was such, that when many came drooping in spirit to him (by reason of the gloominess of this present dispensation) they went away refreshed and comforted by those many gracious words that came out of his mouth.

When word was brought him that major general Harrison was dead, he said, Well, my turn will be next, and as we have gone along in our lives, so must we be one in our death. The Lord God grant, that I may have strength from himself to follow courageously to the last breath; and that I may much honour and glorify God, whom I have made profession of; I can do nothing of myself, but my strength is in the Lord of Hosts, who hath helped me from my beginning to this day, and will help me to the end. The night before he suffered, some of his natural relations came to take their leave of him, and when they were parting, they shed some tears, but when he perceived it, said, O my friends, if you did know and feel what joy I have, and what a glorious crown I shall receive from the hand of Christ (for this work) you would not mourn, but rejoice, that I am counted worthy to be a witness to this cause, and said further. The Lord preserve you all from the portion of this generation: for assuredly, there is great wrath from the Lord that will reach them to their destruction. When

Mr. L. came to take his leave of him, he asked this question, viz., how it was with him? he answered, Very well I bless my God; as to my interest in him I have not the least doubt, but do know assuredly, that when my soul shall be separated from this body, I shall be taken into his presence where is fulness of joy, &c. And by Jesus Christ be presented to my Father, without spot and blame in his own complete and perfect righteousness which is free, and not for any of mine own works: for I am a poor, sinful and wretched creature, and compassed about with many infirmities. And when it was asked him, if he had any thing of conviction upon him as to what he was to suffer for? he answered No, not in the least, for, said he, though man have condemned, yet the Lord hath and doth justify; he added, the Lord had justified it in the field once already in this nation (but that is now accounted as a thing of nought) but he will again do it with a witness, and prayed that the Lord would deliver him, viz. Mr. L. from that judgment that was at hand by which he would do it. To this effect spake he also to many that did quere with him about this matter; being told that his nephew and some others were doing their utmost for his relieve, he replied, that there is nothing to be done: For the sheriff hath brought me word, just now, that I must die to-morrow, and that there was some that desired I might not be quartered, but it would not be granted. But death is nothing to me, let them quarter my body never so much, God will bring all those pieces together again. It was asked him if he had assurance of the love of God? he said, yea, yea, he had fought a good fight and had overcome, and he was ready to suffer the will of God. One asked him if he thought there would be a resurrection of the Cause? he answered, he died in the faith of that, as much as he did that his body should rise again, and if he did not believe that, he should not be so cheerful at the sentence of death; he said also he had not the least regret or disturbance on his spirit about that for which he was to die, for what he did was of the Lord, and if it were to be done again, he would do it. And the way they took to suppress and destroy those that did not think the king's person sacred, their blood will make many hundreds more persuaded of the truth of it: it was grievous to him, to hear how at his trial they blasphemed God and his people; but he was resolved he would own the Lord among them, which they could not bear, therefore they were so violent against him: he said the gospel was going from London, and popery and superstition, &c. was coming in, and it would be a rare thing to find a professor of religion in London shortly; he encouraged those about him, to keep close to the Lord in this evil day. Oh! said he, who would have thought some years since, that popery and formality should have been let in again to these nations? he said, they were so barbarous, they would not allow him some small time to take a little rest before he was to

suffer; which was all he needed or desired of them; for he was much tired with speaking to company that came continually in: He desired to be remembered to some friends, and tell them, That this was the last beast, and his rage was great, because his time was short. Some more expressions he uttered to this effect. But in all his words and manner of speaking, he manifested the highest Christian magnanimity and holy greatness of mind, and such a spirit of joy and glory rested upon him, even to astonishment. It was asked if he apprehended his confidence would continue to the death? he said, he was not strong in his own strength, but in the Lord's strength, which he still relied upon. And he said to one by him, will you not see how God will carry me through next day? and desired prayers for him. One asked him, what he thought of this severe hand of God? He said, that which was hid secret in the bosom of the Father should be manifested in due time: Oh! said he, it grieves me to think how popery is coming upon us like a flood in this poor nation, and the great judgment that will follow. But the Lord will be a hiding-place for his poor people until the indignation be overpast: let not our enemies think to break the spirit by putting us to death; for I am confident, that God will give his spirit seven-fold unto those that are left: but the enemy, the Lord hath set their feet in slippery places, so that when they come to their measure, they must be cast down: Therefore it is the duty of the Lord's people to wait patiently, and he that shall come, will come, and will not tarry. It is a trying time, and none but those that are endued with power from on high, will be able to hold out. One asking him, where his chain was? he said, here it is; and though I have worn it so long, that it hath entered into my flesh, yet it was as Joseph's, it had not entered into his soul. He was highly raised up in admiring the grace of God, that he should be accounted worthy to wear a chain for Christ, saying, they have been blessed chains to me; adding, that the Lord had crowned him beyond many of his brethren, being counted worthy to seal God's work with his blood; admiring that God should accept of such a crazy body: much of his strength being already spent; yet, that God should so honour it in the end; he much admired the depths of the love of God to such an unworthy worm. The Lord will bring my blood, saith he, to cry with the rest of the martyrs, How long, O Lord, holy and true, &c. As for death, or the fears of it, I am got above them, in and through the beholding of the glory of our God, into which I am entering: which glory shall be shortly for the reviving of the spirits of his saints, and destroying his enemies. A friend speaking to him (the night before he died) of this dispensation, he said, he was persuaded, that their blood would be of much advantage to the Cause in foreign nations. Two friends that came to visit him, being, as he thought, under some trouble of spirit, he directed his speech to them as follows; Be not

troubled, there is nothing stands between me and the Father; for I go with all clearness and freedom, and, I know, that Jesus Christ is my complete righteousness; and this is my crown of rejoicing, That I die not in the Lord only, but for the Lord; and think not that this blessed Cause shall be lost; for it shall reach to the end of the earth. Think not your prayers lost, for your prayers and tears with our blood, shall come down shortly upon Babylon, although they think to heal her, yet they shall give her a greater blow than ever we could have given her in our persons. Those who have been pleading for sufferings, who so ready to run away from it! While the Lord hath given us a little of the spirit of rejoicing, that hath made us willing to be giving up ourselves unto him. And, although the enemy think to conquer us, they shall never do it; for we are got above them in the spirit of the kingdom; we trample upon them, and they are under our feet; and this blood that now is shed, shall warm the blood that hath been shed before; and shall come down and do notable execution upon the enemy. The Lord hath, in much wisdom, hid this death from us, and hath allured into it; but he hath fitted us for it, and be not troubled that he hath taken away two or three drops of the spirit; for he will in the room thereof pour it out upon you.

The day he suffered, and the hour being come, the rope being tied about him, he rejoiced exceedingly, saying, Oh, what am I, that I should be bound for the cause and interest of the Son of God? And when he was coming down Newgate stairs, to go into the sledge, in a very smiling cheerful manner, he uttered words to this effect; 'My Lord Jesus, for the joy that was set before him, endured the cross, and despised the shame, and is now set down on the right hand of God; whose steps I desire to follow.' It was also observed, that the cheerfulness of his countenance, all the way as he went to the gibbet, remained, to the encouragement of the faithful, and admiration of enemies, uttering by the way many cheerful expressions, setting forth his joy in the Lord.

When he was brought to the gibbet, before he went up the ladder, his hands being bound, he exhorted several friends standing by, to be faithful unto death, and not to be ashamed of the Cause for which they suffered, and they should receive a crown of life. And further said to a friend that stood by, that he hoped the truths of the kingdom which he had preached up and down would not be the less esteemed, for that he came now to seal them with his blood.

After he had mounted the ladder, he made the following Speech.

"Truly, it is not words, nor that which I have to speak in mine own spirit, will glorify God, or give any advantage to your souls, or unto me: But it is; if I may speak a few words, in the spirit of the Lord, and in the power of his might, and from an unfeigned love unto Jesus Christ: That would indeed give me an

open entrance, and make my passage very sweet; and a blessing may be behind, even upon you. The first thing, indeed, that hath been very weighty, and I desire to leave it upon all, upon saints, as well as upon those that are not acquainted with Jesus Christ, that eternity, immortality, and eternal life, it is a wonderful thing; the thoughts and apprehensions of it are able to swallow up a poor soul: we little think what it is; he that knows most of God, and most of Christ, and hath the greatest measure of the anointing, he little, little knows what it is to appear before the holy, the most glorious, the most righteous God of heaven and earth; to stand before his judgment-seat, before Jesus Christ that is at his right hand: And where all the holy angels are so ashamed, because of the glory of God, that they fall down and cover their faces, and cry, Holy, Holy, Lord God Almighty, which art, and wast, and art to come. And therefore, if such glorious creatures, if such excellent spirits, as these seraphims and cherubims be, if the do fall down before the glory and majesty of this most excellent and wonderful God, how should dust and ashes do? And how should they fear and tremble to appear before him? And therefore, I say, think of this, and of the righteousness of God, as well as of his glory and majesty, and of his justice; that when for one sin he threw down the angels, those glorious spirits, into hell, and he would take no ransom or redemption for them; and though he hath mercy on the sons of men, according to his own election and purpose, and according to that that he hath purchased for himself in Christ Jesus before the foundation of the world was laid, yet in time he made his Son a sacrifice before men and angels, to bring his chosen ones to glory. That he should take pleasure to send his own Son out of his bosom, who was the delight of his soul, and bruise him for our sins; yet it pleased the Father to bruise him. The most holy and righteous God, that had but one Son, one only begotten Son (that was the delight of his soul), and should take pleasure to bruise him, that we might be healed, and laid stripes upon him that we might be healed! Oh! the height and depth! Oh! the length and breadth of the love of God in Christ Jesus unto poor souls! Oh! this is that the angels do desire to stoop down and look into, and to know more of this great mystery of the love of God in Christ: And that God should take upon him the nature of man, and put him into that glorious union with his own Son: and that he should leave the angels, though Christ was made a little lower than they for suffering death for us: Yet now, because the nature of man is united to the Godhead by virtue of that marriage and union, we become the sons of God, and heirs of glory. Those that are adopted by Jesus Christ are brought near to the throne of glory, are in a high and glorious communion and fellowship with the Father and Spirit, owned of all the holy angels. And therefore they do stand without the throne, as in

several places of the Revelations, and round about the elders, and round about those that were given to the Lamb, as in the fifth of the Revelations, and many other Scriptures, they stand without; but there is another company within, which is the twenty-four elders, and four living creatures, they fall down and worship God, they are nearer than the angels: Oh! who hath credited, who hath believed this report, and to whom is the arm of the Lord revealed? Oh! how many professors are there in this day, in this nation, that call upon the name of Christ, and that say they shall be saved by Christ, and do live and trust most in their own works and righteousness: and never come to the knowledge and understanding of this great mystery of the love of God in Christ? Who never received those teachings from the anointing, and according to the new covenant, where it is promised, that they shall be all taught of God; all the children of God shall be taught of him; and there is no one can teach these but the Father, none can draw them to the Son but the Father; and no man can come to the Father but through the Son: and this great mystery is both by the light and operation of the Holy Spirit, who makes the new creature in the soul: O that God would pour out his Holy Spirit! That God would pour out the spirit of the new covenant, and the spirit of the Gospel, and the spirit that can declare the mystery of God's word in the spirit, and that he hath made manifest through Jesus Christ! Oh! there is much talking and speaking in the name of Christ, and how many men spend little time in getting evidences in the power and demonstration of the spirit, and come to apprehend God in Christ, that speak of him? Oh! there are few of these, the Lord knows. O that the anointing may be poured out more now, according to this faith, in the way of this grace, and in this love of God, even in the electing love of the Father; and in the redeeming blood of Jesus Christ, according to the purchased possession that he hath obtained through his own righteousness, wherein God hath been justifying the ungodly; and among them, such a poor simple piece of dust and ashes as I have been, and have to this day little glorified my Father; and yet I can call him Father, through some measure of his spirit, and Father, according to the spirit of adoption too; and can say the Lord Jesus hath given himself for me; and I take the Lord Jesus Christ as the great gift of the Father, desiring to bear witness of that love, and of that wonderful grace and glory, that he hath made me partaker of, in and through him. Oh! blessed be the God and Father of our Lord and Saviour Jesus Christ, who hath called me to this hope, and who hath made me partaker of this glory, that the Saints are enlightened in. And now I long to see the face of this Father, and of his Son, though I have such a number of sins in me; and though I have an interest in him, and can call him Father at any time, without doubt, and in full assurance of faith in the Holy Spirit; yet if Jesus

Christ were not there, to present me faultless before the presence of God, I should be afraid to appear before him; but he is able to do it, and therefore saith the Apostle, 'Now unto him that is able to save you, and to present you faultless before the presence of his glory with exceeding joy,' &c. I am a poor sinful piece, full of iniquity, laden with many burdens, that have a body of death that I carry about me, and I am about to lay it down, and my soul shall enter into eternal life, and be made perfect in a moment, through the mighty power of God that hath wrought that glorious work of raising Christ from the dead. Oh! all my strength, and all my joy, and all my life is in Christ, and in him alone; and I have a righteousness already of his working, according to his own grace, and according to his own mercy that he hath been pleased to work in me; and so hath been pleased to keep me in a very wicked, and in a very evil day, by the power of his grace. And I desire to glorify my Father, and many years have I been in that work, that hath been of late in this nation; a few and evil have been the days of my pilgrimage, but I have desired to serve the Lord with faithfulness, and in the integrity of my soul, without prejudice against any creature, and it hath been the desire of my soul to approve myself faithful towards God, and towards man: and what I have done, I have done it in obedience to the Lord: that I had in my eye, and in my heart. There are many things that are laid upon many of those that profess the kingdom and glorious appearance of Jesus Christ, as if they were enemies to magistracy and ministry; and as if so be we were for the destruction of the laws and properties of mankind; therefore shall I speak a few words unto that: and if indeed we were such, we were fit to be turned out of the world; as some now think they should do God good service in sending such poor creatures quickly from hence. There is no such thing; I desire to bear witness to the true magistracy, that magistracy that is in the word of the Lord. And that true ministry, which ministry is a ministry from the anointing; that doth bear witness to the Lord Jesus, and hath his holy spirit. That testimony I desire to bear; and that testimony I desire to stand faithful in, with integrity to the Lord Jesus, as king of saints, and king of nations. And therefore it is, I say, to have a magistracy as at the first, and counsellors as at the beginning, men fearing God and having covenantousness; and that ministry as doth preach the everlasting Gospel."

Here Mr. Sheriff interrupted him, saying, 'Tis desired that you spend the rest of your time in preparing yourself. Another said, You spend yourself, sir, in this discourse. Another said, It rains. Then Mr. Carew said, I will pray.

*Mr. Carew's Prayer.*

"O most holy, and most glorious, and blessed God, the God and Father of our Lord Jesus Christ, the Father of all glory: The God of the



spirits of all flesh; unto thee, unto thee doth my soul desire to come through the new and living way, even through Christ my righteousness: and in him and through him to be offered up by the eternal spirit, a living and acceptable sacrifice, in which thy soul delighteth. O Lord, thou knowest my frame, and thou knowest my life, and what a passage this is; and what a wonderful thing it is, to enter into glory. And what a wonderful thing it is to stand before thee, and to stand in thy presence. O Father, Father, let my soul be filled with thy joy, and with peace in believing; O let my heart be in heaven while my body is here; and O let me be joined unto the Lord, through thine own spirit before this separation be. O Lord, thou only art able to take hold of my heart and spirit; poor creatures may speak words to thee, but oh! it is thine own power, and it is thine own spirit, that must take hold of the heart; it is thine own spirit that must carry through all, and it hath been thy spirit (blessed be thy name) that hath carried me through many trials, and many temptations, and many difficulties, that thy poor worm hath met with in this pilgrimage for many years. O blessed be thy name for all the goodness, and for all thy grace, and for all thy presence that hath been with thy poor creature far and near. Oh! blessed be thy name that thou hast kept me in any measure faithful unto thee, and made me willing to lay down my life for thy righteous work and cause. Oh blessed be thy name, that the Lord and Christ (that is at thy right hand) hath bought me with his own most precious blood. He hath redeemed me indeed. Therefore it is but my reasonable service that I should be offered up a sacrifice to him, my joy is in him, and my confidence is in him, that I shall be presented before him to my heavenly Father. O Father, when thy servant is to be presented before thee, let him know what it is to find mercy. Let him know what it is to have Jesus Christ an advocate; and what it is to be presented before thee by such a Redeemer. O that Jesus Christ might bid me welcome into thy presence; and may say to my soul, 'Well done good and faithful servant, enter thou into the joy of the Lord.' O blessed Father, it is not that I do expect any thing from thee upon any account below the account of the Lord Jesus: and whereinsoever thou hast been glorified by thy poor servant, it hath been by thine own power and thine own working. O nothing unto thy poor creature is due, but unto thy holy name be praise and glory. O holy Father behold thy work in the kingdoms, and behold the cause and interest of all thy people. O do thou revive it in thine own appointed time; O do thou strengthen the hearts of thy poor saints: O scatter all clouds, speak comfortably to their souls, that they may be able to stand under all storms, faithful unto the death, and receive a crown of life and glory. O bless thy poor saints in the city, and bless thy saints in the country: and bless thy saints in the West: O bless thy sons and thy daughters;

O bless all the meetings of thy people, let the blessing of the Lord appear unto them, let the glory of the Lord make haste; let the glory of the Lord be upon these nations. O remember thy promise to thy ancient people the Jews; O let thy people be taught of thee, O let these dry bones live, O let the spirit of life breathe upon them. O dear Father let the fullness of the Jews and of the Gentiles be brought in. Let multitudes be gathered out of every kindred, and tongue, and nation, unto the kingdom of Jesus Christ. O Father, Father, advance thy Son, set him as king upon the mountain of thy holiness; give him all glory, and power and dominion over the whole heavens, that thou hast promised according to thy word and covenant to give unto him: that he may reign in thine own word and law, through his own spirit for ever and ever. Lord, Lord, I desire thou wouldst gather up my soul, O gather up my soul O Lord, make this passage sweet, O make it comfortable. Lord Jesus thou hast taken away the sting of death, and born the burden of all this shame, and of all this reproach. And thou hast given thy poor servant something of thy presence, through the riches of thy grace this day. O Lord, now receive, O open thine everlasting arms: O now let me enjoy thy presence. O God, which I have desired to behold and see, and to behold thy face in Jesus Christ, O, and now let me enjoy what thou hast prepared for me: and fill me with the joys that are at thy right hand, and those pleasures that are in thy presence for ever more. O thou Lamb of God, lead me to the everlasting fountain, that living fountain that is able to supply all our wants. O Lord bless, bless, thy poor people; O comfort them in this day. Pour out sevenfold of thy spirit for what thou dost take away in any of thy servants, for thy holy name's sake. O let the cause and kingdom of Christ be dear and precious in thy sight, and live always. Lord little do these (poor creatures) know, or these nations know what a controversy thou hast with them, O that thou wouldst be pleased graciously to spare this people, spare thy people however; and let them that love Zion, and favour thy righteous cause, be glad for ever and ever. O now Father be near to me, do thou receive my spirit, take me into thine own glory, take me into thine own glory; let me know it is my portion, let me know there is a crown in the hand of Christ prepared for my soul. O blessed Lord, thou hast honoured thy poor creature, and brought him hitherto, O reward all the labours of love in any to him, in bonds or death; and give them a double reward into their bosoms. Reward it so to them and theirs. Blessed be thy name that thou hast brought thy poor one hither to suffer in thy cause. And O Lord, let thy spirit be poured forth upon the nations, until the whole earth be filled with the knowledge of thy glory. And that Christ Jesus may have all the honour, and praise, and glory, and dominion for ever, and ever." Amen.

"I am so exceeding dry that my tongue is ready to stick to my mouth. But I would fain speak a little more. Oh blessed be God! Oh! how many are the refreshments I have had from the presence of my God and Father, sweet, and secret communion betwixt him and my soul to day. And for that my soul hath seen of his riches and kindness. O that I might be more like Christ; for I have been very unlike to Jesus Christ, very unlike to my Father. But I shall leave all that is unlike Christ behind; And all his own workmanship he will purify and perfect through this passage into glory. O my dear Father, receive my soul, Oh! make this passage sweet, for now I am coming to thee; Lord help me, Lord spirit me, fill me with thy spirit, let me be ever with thee, let me know what it is to have thee at my right hand, that I may not be moved; that in my soul going out of the flesh, I may be let into the presence of God, and into the arm of Jesus Christ. Oh! That my soul may be breathed forth into the arms of God, into the bosom of Jesus Christ, through the anointing of the spirit."

His prayer being ended, a friend that stood by, said: It is expected you should speak something to the matter of your suffering. The under-sheriff said, 'Tis not to be suffered: What are you, that you put on men to speak? What are you, Sir?

Mr. Carew said, Farewel, my dear friends, farewell; the Lord keep you faithful. The friend said, We part with you with much joy in our souls.

Mr. Carew said to the executioner, "Stay a while, I will speak one word, and then said very solemnly, with a loud voice, Lord Jesus, receive my soul; Lord Jesus, into thy hands I commend my spirit. And then was turned off."

**Some Particulars of the subsequent BEHAVIOUR and of the EXECUTION of Mr. JOHN COOK, the 16th day of October, 1660, at the same place.**

His wife coming to visit him in the Tower of London, but not having admittance to him, he saw her forth of his window, and said, Go home to thy friends my dear lamb, I am well, blessed be God they cannot keep the Comforter from me.

His wife asking the gentleman jailor to see him (another time.) He answered, she might see him suddenly in Newgate; her husband hearing of this, said, If the way to the new Jerusalem be through Newgate, blessed be God for Newgate, the King of Glory will set open his everlasting gates to receive me shortly, and then I shall for ever be with the Lord.

*A Note sent by him from the Tower.*

My D. L. Cheer up, heaven will make amends for all, blessed be God I am full of spiritual joy, and do trust God to make what bargain for me he pleaseth, for he knoweth

the appointed time of my composition and dissolution, let us look to Jesus, Heb. 12.

After Mr. Cook was brought to Newgate, discoursing with some friends there, he said, I am now going to my trial, wherein the Lord strengthen me. If I be attainted yet my estate in Ireland is not thereby forfeited without an act of parliament to that purpose, and indeed it is much set upon my heart, that if my small estate be taken away from my poor wife and child, it will prove as poison to those that enjoy it and consumptive to the rest of their great estates, for I bless God I never acted maliciously, or covetously, but in a spirit of simplicity and integrity, however the good will of the Lord be done.

I commit and commend my dear, loving and faithful wife and child to their blessed husband and father, with three scriptures especially for their portion. The widow's cruse and barrel of meal, 1 King. 17. Isa. 54, ver. 5, to 10. Jer. 49, 11. Earnestly desiring that my child may be religiously educated in the fear of the Lord. Thus if God hath appointed it, I shall go from the cross to the crown.

Speaking to some in prison, for the clearing of himself from false aspersions, said, Whereas some say I have done them wrong, they do much wrong me in so saying, I have relieved many so far as by law I could, knowing that the worst of men ought to have justice; I bless God I durst not wrong any man, for I know that I shall meet them at the last day before the bar of Christ's judgment, where I can with boldness look all men in the face as to matter of justice, for which I have great cause to bless the Lord, Ho! be his name.

Some in the prison speaking of the differences in religion, Mr. Peters said, Pray talk not of controversies now, we have but a little time to live, and cannot spend it in such discourses.

Whereupon; Mr. Cook said, Blessed be God, brother Peters, we are going to heaven, where the Saints are all of one mind, which my soul hath long desired to see, it rejoiceth my heart to think what a perfect happiness I shall have there; the best condition here is but mixed, but in heaven there is no sorrow nor trouble, neither have I one dram of trouble upon my spirit at this time, blessed be God he hath wiped away all tears, and I could with Paul and Silas sing in prison for joy, Blessed be the Comforter.

Discoursing after he came into the dungeon, he said, When a poor creature comes about so solemn a work as to die, what a blessed thing is it to have a helper, and what can help but the holy Spirit; blessed be the Comforter, for I am full of spiritual consolation; if one of you was to have a thousand pounds a year after the death of an old man consumptive, that would not live three days, how would you rejoice; this is my condition through grace, I must in a little time put off the old man, and enter into the possession of heavenly glory. Let no good people fear a prison, for it is the only place, wanting other books, to study the book of self.

A friend going about to comfort Mr. Cook from the consideration of the brevity and uncertainty of man's life, using some expressions of love, &c.

Mr. Cook replies, What dost thou speak thus for? if I were sick of a fever this might be a suitable discourse, but we must talk at a higher rate than this now; were I to chuse, I would rather chuse this death than to die of a fever, for there is much pains and sometimes distractions, but here a man is well when he goes upon the ladder and out of all pains in a quarter of an hour; and speaking to a friend, said, I am now going to heaven, and shall leave you in the storm.

*Mr. Cook to some Friends in Prison.*

Friends, I beseech you rejoice with me, O let us bless the Lord that he counts us worthy to be sacrifices to follow his steps, was not the Captain of our salvation made perfect through sufferings, and shall not I, Oh I long to be at home, out of the body with the Lord, though I go through a sea of blood to him; truly I think every hour ten, little do my enemies think what a friendly part they do me, to hasten me to my Father's kingdom, to my crown and glory; I had rather go to my dear Jesus with my chain and cross, than to sit down with an earthly king on his throne and wear a crown of gold.

Some disaffected to him being present said, the Jesuits suffered cheerfully and confidently.

Mr. Cook replies, I bless God my justification is not built upon the merits of works, but alone upon grace in the blood of Christ.

The said person compared him and his fellow prisoners to Corah, Dathan and Abiram.

Well friends, said he, it matters not who condemn, when God justifies.

Mr. Cook (said they) do not justify yourself, but confess your sins, your heinous crime against the Lord and his anointed, and repent.

Mr. Cook replies, I must needs tell you, that if repentance was now to do, I was in a sad condition, but I bless my God he hath enabled me to confess my sin, and hath sealed my pardon in the blood of his dear Son, and given such peace as none can give or take away. I have no guilt nor trouble upon my spirit touching what is done, but such sweet peace in God as I cannot express, and I shall leave all with God who judgeth righteously, who will decide all things.

Mr. Cook, to Mr. Peters in the dungeon, said,

Brother Peters, we shall be in heaven to-morrow in bliss and glory; what a blessed thing is that? My very heart leaps within me for joy; I am now just as I was in the storm, almost in sight of heaven; read me Isaiah xliii. 9, 10, and lxi. 10, 11. Hos. xiii. 14.

Then looking upon his bed, said, That shall be my last pillow; I will lay me down and sleep a-while: and he slept about an hour and half, and then awoke, saying, Now farewell sleep, no more sleep in this world, and farewell darkness and night, I am going where there

shall be no night, neither need of a candle, nor of the Sun, for the Lord will give us light, yea, the Lord will be our everlasting light, and our God will be our glory.

And welcome every thing that gives notice the hour is at hand, welcome the cock that crows, welcome sweet death, my good friend, that will bring me so near eternity. O blessed be God, blessed be his name! Oh this Christ is a blessed Christ! he answereth all things, and within few hours we shall be crowned with glory and victory; blessed be our Lord Jesus that hath given us the victory over sin and death. Welcome Mr. Loman, my Keeper, welcome angels, that will within a few hours take the office, and guard me into eternity.

At midnight he prayed very fervently, and the common prisoners heard him, and seemed very sorrowful by their expressions, saying, Sir, the Lord be with you; O that our souls might go where your soul goes. About the morning, speaking to Mrs. Cook, said, Lamb, do not dishonour my last wedding-day by any trouble for me: For if all my judges did but know what glory I shall be in before twelve o'clock, they would desire to be with me. And let the executioner make what haste he can, I shall be beforehand with him; for before he can say, Here is the head of a traitor, I shall be in heaven. Come, Lord Jesus, come quickly, my soul longeth for thee, and I wait to hear thy voice, saying, 'Come up hither, and immediately I shall be in the Spirit, and then shall I for ever be with the Lord.' And at midnight there was a cry heard, the bridegroom cometh, and they that were ready went in unto the marriage; This day I shall enter into the joy of my Lord.

Come, brother Peters, let us knock at heaven gates this morning, God will open the doors of eternity to us before twelve o'clock, and let us into that innumerable company of saints and angels, and to the souls of just men made perfect, and then we shall never part more, but be with the Lord for ever and ever, singing praises, singing praises to our Lord and everlasting king to all eternity: he said further, O what a good master have I served, that stands by me now, and supports me! with his everlasting arm he bears me up; then said, Come away, my beloved, make haste, and be thou like unto a young roe, or a young hart upon the mountains of spices. Behold I come, Lord Jesus, I come full sail to thee, I come upon the wing of faith, Lord Jesus receive me. And going to lie down on his bed, he said, it is no more to go to die to-morrow than it is to go to sleep to-night. I bless the Lord I am free from trouble, and my poor heart is as full of spiritual comfort as ever it can hold, and this joy can no man take from me.

The doors of the prison being opened in the morning, he spent that little time he had left in prayer and heavenly discourse with friends that came to visit him, preparing himself for his suffering with such a cheerfulness, as was an astonishment to the spectators.

Then speaking to his wife, said, farewell, my dear lamb, I am now going to the souls under the altar, that cry, how long, O Lord, holy and true, dost thou not judge and avenge our blood on them that dwell on earth? and when I am gone, my blood will cry and do them more hurt than if I had lived. But I am now going to eternity, blessed be God, be not troubled for me, but rejoice, because I go to my Father and your Father, to my God and your God. And after some time spent in prayer, he desired his wife not to withhold him by an unwillingness to part with him now, when God called for him, to be offered up as a sacrifice for his name and cause.

After a little pause, she freely gave him up to the Lord; to which he replied, Now all the work is done, and said, I resign thee up to Jesus Christ, to be thy husband, to whom also I am going to be married in glory this day.

His wife shedding tears, he said, Why weep-est thou? Let them weep who part and shall never meet again; but I am confident we shall have a glorious meeting in heaven; here our comforts have been mixt with checker-work of troubles, but in heaven all tears shall be wiped from our eyes.

He asked several times if the sheriff was not come, saying, Why stay the wheels of his chariot? why do they drive so heavily? I am ready, blessed be God, I have nothing to do but to die.

Word being brought that the sheriff was come, he makes haste to be gone, and his wife stepping after him, took hint by the arm; whereupon he said, O do not hinder me from going to Jesus Christ!

And then with a cheerful countenance, taking leave of his friends, he went to the sledge that carried him, whereon was also carried the head of major general Thomas Harrison, with the face bare towards him; and notwithstanding that dismal sight, he passed rejoicingly through the streets, as one borne up by that spirit, which man could not cast down. Being come to the place of execution, when he was taken out of the sledge, he said, This is the easiest chariot that ever I rid in, in all my life.

Being come upon the ladder, and the rope put about his neck, he rejoiced, saying, Blessed be the name of God, that I am bound for the sake of Jesus Christ.

Then he addressed himself to God in prayer:

*Mr. Cook's Prayer before his Speech.*

"Most glorious Majesty, this day is a representation of that great day when all thy poor people shall meet together, multitudes, multitudes in the valley of destruction, Thy poor servant is now come to pay the debt which he oweth to nature, blessed be thy name that thou hast prepared him for it, blessed be thy name sweet Jesus, blessed be thy name. O that all thy poor people that are here if possible may feel something of that divine power and assistance of God, that thy poor servant now feels at this time; blessed be thy name. I am a

poor creature, a poor sinner, and the Lord might justly withdraw from me, and leave me to horror and searedness, if he should deal with me in justice. But this hath not been his method (blessed be his name) to leave and forsake his poor servant. Lord let thy blessing be upon us at this time, and let thy blessing be upon England, and let thy blessing be upon all these nations, and let thy blessing be upon all that are here; Assist us, O Lord, by thy divine power; give us to see much of thy power, and let not this meeting be in vain, but let every one here receive benefit thereby, to the praise and glory of thy great name, and the everlasting salvation of all our souls (if it be thy blessed will) through Jesus Christ our Lord."

Having ended his prayer he made the following speech:

"Mr. Sheriff and gentlemen; The most glorious sight that ever was seen in the world was our Lord Jesus Christ upon the cross; and the most glorious sight next to that is to see any poor creature suffer for him in his cause. I desire to speak a few words briefly, to let you understand what a glorious work the Lord hath been pleased to accomplish upon my spirit. I bless the Lord, I have ransacked into every corner of my heart, and I have searched into all my sins actual and original, secret and open, known and unknown, so far as the Lord hath discovered them to me; and I have confessed them all with a penitential bleeding heart, and contrite spirit; blessed be his name, he hath been pleased to come in an abundant manner, and hath been pleased to shew me that the only remedy is the blood of Christ; and I have, blessed be the Lord, applied that precious blood to my poor soul, and have laid hold upon Christ, by a true and lively faith; and there is a sweet calm and serenity in my soul and conscience, blessed be thy name. I desire to glorify God, and to give him the glory of all, and to take shame unto myself for any sins that I have ever committed, that I know to be sin; and therefore, I desire to rejoice in the God of my salvation; as Isa. lxi. 10. 'I will greatly rejoice in the Lord, my soul shall be joyful in my God, for he hath clothed me with the garments of salvation, he hath covered me with the robe of righteousness, as a bridegroom decketh himself with ornaments: And as a bride adorneth herself with jewels, even so the Lord delighteth in me. And as the earth bringeth forth her buds, and as the garden causeth the things that are sown in it to spring forth, so the Lord will cause righteousness and praise to spring forth before all nations.' And Isaiah xlii. 9, 10. 'Ye are my witnesses, saith the Lord.' I do desire to bear a testimony unto God and to Jesus Christ, for justice and truth and righteousness and holiness.

"The Lord knows I have no malice upon my heart against any man or woman living upon the face of the earth; neither against juries that found me guilty, nor Court that passed sentence; I desire freely to forgive every one from the bottom of my heart. And as con-

cerning this great dispensation, you may (it may be) desire to hear something of it. Truly I say, as to the king's majesty, I have not any hard thoughts concerning him: my prayer shall be for him that his throne may be upheld by truth, and by mercy; for by mercy, as Prov. 23, the throne is upheld. But I must needs say, that poor we have been bought and sold by our brethren, as Joseph was.

"Brother hath betrayed brother to death; and that Scripture is in, a great measure fulfilled, Mar. x. 21. "The father against the son, and the son against the father; and brother shall deliver up brother to death." I desire to my own part to kiss the rod; and I do desire (if it may please the king's majesty) that no more blood may be shed after mine: it may be the Lord will put it into his own breast. Here is a poor brother coming, I am afraid that he is not fit to die at this time; I could wish that his majesty might shew some mercy.

The Sheriff interrupted in words to this effect: Let that alone, for the king's majesty hath clemency enough for all but his father's murderers.

Mr. Cook replied, "Then I shall proceed to speak something concerning my profession and faith, which I bless the Lord, is founded upon the rock Christ Jesus. I do not expect salvation for any thing I have ever done, but only lay hold upon Christ as a naked Christ, and there to bottom my soul. I can say, to the praise and glory of God, that I have endeavoured in my place, and to my power, to do that which might be to God's glory, according to the best of my understanding. I have stood for a gospel magistracy and ministry, and that many delays in the law might be removed (and that thing I have much suffered for): I say it is good both for king and people, that many delays in matter of justice should be removed, and that public justice might be speedily and cheaply administered.

"And as for my profession, I am of the congregational way; I desire to own it, and am for liberty of conscience, and all that walk humbly and holily before the Lord, and desire to walk in the fear of the Lord; and I believe it is a truth, and there can be nothing said against it. I do confess I am not convinced of any thing I have done amiss; as to that I have been charged with, I am not indeed; neither did I understand the plea of the Court, that if the lords and commons had brought the king to the bar, and had set him over them again, their bringing him to the bar had been treason. I desire never to repent of any thing therein I have done; but I desire to own the cause of God and Christ; and am here to bear witness to it, and so far as I know any thing of myself, I can freely confess it.

Here the Sheriff interrupted him again, desiring him to forbear any such expressions.

Mr. Cook replied, "It hath not been the manner of Englishmen to insult over a dying man, nor in other countries among Turks or Galliassees. The Lord bless every one of us,

and help us, that we may look more to the honour and glory of God than the concerns of our own lives: for alas, what is a poor miserable life to us, but that therein we might give honour and glory to the God of all our mercies? And if there be any here of that congregation to which I was related in the time that I lived here? I would commend to them that Scripture, Phil. ii. 17, 18. "Yea, and if I be offered up upon the sacrifice and service of the faith, I joy and rejoice with you all, for the same cause also do you joy and rejoice with me." And Deut. xviii. 11. "The Lord God of your fathers make you a thousand times more than you are, and bless you as he hath promised." The Lord be pleased to speak comfort to them, and to all them that fear the Lord. The Lord keep England from popery, and from superstition, and keep it from prophaneess, and that there may not be an inundation of Anti-christ in the land. And that is all the harm I wish unto it. The Lord hath forgiven me many thousand talents, and therefore I may well forgive those few pence that are owing unto me. I bless the Lord I have nothing lying upon my conscience, but I can unbosom myself to every one, and to the throne of free grace, in the simplicity of my spirit; I have endeavoured to do nothing but with a good conscience, and through the integrity of my heart, though accompanied with many frailties. I desire to bless the Lord, my lot was rather in Ireland than here, but I have been more known where I have given the offence."

The Sheriff again interrupted him.

Mr. Cook replies, "Sir, I pray take notice of it, I think I am the first man that ever was hanged for demanding of justice, therefore I hope you will not interrupt me. I suppose you were there, and do bear me witness in your conscience, that there was not any thing then, that I did not communicate to the Court, that I now speak upon the ladder.

"If you will believe the words of a dying man. I say, as I must give an account, I have nothing lieth upon my conscience. We must all meet together at the great day of the Lord, to give an account of all our actions, (and when it will appear) the Lord grant we may meet with joy and comfort.

I have a poor wife and child, and some friends left, I desire you that come along with me, to commend to them Isai. liv. 4, 5, and 10 over, I hope the king and parliament will consider our poor friends as to their estates; you know that those lords that formerly suffered under the parliament, did not lose all their estates; I hope there will be some consideration as to justice, (lest that our small estates prove a poison amongst their great deal) and my poor wife and relations suffer. The Lord grant that mercy may be shewed, that mercy and righteousness may magnify and exalt itself above justice. I shall not hold you long; I shall desire, in the fear of the Lord, to give myself (as in Rom. xii. 1.) "A

living sacrifice, holy and acceptable unto God, which is but a reasonable service." And so I do intreat that I may have a little time to call upon the Lord, unless there be any thing more desired, or any one that would ask me a question.

"Truly I forgive all from my heart, I have nothing upon my heart to accuse any of them withal. I bless the Lord I have a clear conscience, I say it in the integrity and simplicity of my heart, (I do now appeal to the great God, to whom I must give an account of what I have done) knowing that all my guilt is washed away in the blood of Jesus Christ, (and before him I hope to appear) and have nothing else to plead any thing at all for me.

"And so I hope that I have declared myself with simplicity and integrity, in a few words, that you may understand my mind.

"I shall speak a few words to the Lord in prayer, and shall not trouble you further:—

*Mr. Cook's Prayer.*

"Most Glorious Majesty, I beseech thee so to warm my heart, and fill it so full of the love of Jesus Christ, that it may never be cool any more; Oh that the Lord would now appear graciously to shew himself a wonder-working God, in bearing up the heart and spirit of thy poor creature, it is no matter how bitter the cup is, if the Lord give strength to drink it, and no matter how heavy the burden be, if the Lord be at one end, and uphold the other, and bear the burden himself, or lay no more upon his poor children, than they are able to bear; the Lord give strength to all that are to bear this burden; the Lord be with all that are yet to suffer in this cause, and double and treble seven-fold of thy spirit upon us, let us not stand it out against our reasons and judgments and consciences. If any did pursue power and interest, and did not look after the good of God's poor people, and the good of the nations, the Lord forgive them. The Lord knows the simplicity of the hearts of his poor servants that are gone before, and of those that are to come after; I desire that all thine may have hearts willing to suffer for thee, to make confession of faith in Christ Jesus, I know is nothing, I know it is not enough only to confess in words, to confess in doctrinal evangelical truths, and to confess by a holy life and conversation; and if the Lord call any of his poor children to seal the truth with their blood, yea their precious blood, it is their duty also: if the Lord Jesus had come down from the cross and had not shed his most precious blood, and had not by that blood gone to heaven, our salvation had not been. Lord let it be well with England, the Lord hear me for my poor friends and relations, for my poor wife and child; unto thee Lord I commend the cause of God, and of Jesus Christ, and remember poor Ireland wherein I had a lot and interest, the Lord remember them all, and help thy poor children to continue faithful unto death, that so we may receive a crown of life, for the sake of our Lord Jesus

Christ: and so I come Lord Jesus, Oh receive my soul! Send down a guard of angels to convey my soul into Abraham's bosom; receive my soul, O Lord, into thy hands I commend my spirit. And I desire to appeal to thee O Lord, thou art the great God of heaven and earth before whom all controversies must come.

"I believe there is not a man in the world whatever he be, but hath some reverential fear of death; but for any sinful vicious fear, I bless the Lord I have not the hundredth part of a dram upon my conscience; if it were my wedding day I could not more rejoice in the Lord, because it is a consummation of that marriage that my Lord Jesus hath made up with me. Blessed be thy name, methinks I do see with Stephen, even by the eye of faith, heaven open, and the Lord Jesus ready to receive my poor soul. And oh that I may with Ezekiel see the glory of God; and see, with Isaiah, the Lord sitting on his throne of glory. And oh that the love of the Father, and of the Son, and of the Spirit may warm my heart, and carry me up from the beginning of this passage to the end and close of it. Lord Jesus come and receive my spirit, and sweeten this cup, and let me say, The cup which my Father hath given me, shall I not drink of it? And I leave all into the hands of the Lord, that if it be the Lord's will every one that belongs to the election of grace may meet with comfort at the great day, and that we may shake hands together, where no office of love shall be unrequited, nor any unkindness shewed to the people of God.

"But within a few hours I shall be in the harbour; I am just now entering into it, I would not go back again for all the world.

"Blessed be the Lord I despise the shame, and am willing to endure the cross, for Christ's sake: because the Lord Jesus, who is the author and finisher of my salvation, did it for me. The Lord pity those that follow, and bear up their hearts.

"The Lord help his poor people that find any thing upon their soul: that they should stand fast unto the truths of Jesus. Alas, we shall be but a few days here, and heaven will make amends for all, and we shall glorify God in eternity, where we shall enter into a sinless, timeless, and temptationless estate, and never meet with sorrow or troubles any more; but the Lord will receive us to himself, and then the innocency of thy poor servants shall be vindicated, and we shall be ever with the Lord, blessing and praising his holy name.

"When Elijah was taken away, the spirit of Elijah rested on Elisha, who stood up in his stead. And when John the Baptist was cut off, the Lord had his apostles to supply that office. The Lord will have profit in the death of his children. I believe that an army of martyrs would willingly come from heaven, to suffer in such a cause as this that I come here to suffer for.

"I desire to bewail that I have not had so

much love to the glory of God therein as I ought. But as to the thing I come to suffer<sup>d</sup> for, I have not had any thing or act come to my mind with less regret, and greater comfort than this.

"And as for those that brought me hither, I do forgive them, I have not one hard thought concerning them, the blessing of the Father, Son, and Spirit be with them.

"Oh that the Lord would grant that no more might suffer: and so dear and blessed Father I come into the bosom of thy love, and desire (to enter into that glory which is endless and boundless) through Jesus Christ."

After which he was turned off.

A little before his death he had wrote the following Letters:

*A Letter written from the Tower to a Christian Friend, by Mr. Justice Cook.*

"Sir; Now in answer to your loving enquiry how it fares with my better part, I bless God I never found so much internal spiritual solace and unmixed joy and comfort, as I have experienced in these five months endurance, 2 Cor. i. 3, 4, 5. Let never any Christian fear a prison, it being the only place, where (wanting other books) a man may best study the book of the knowledge of himself, having a long vacation from all business; but praying unto, and praising God in Christ, by the spirit's assistance. I cannot take Martha's part, for none must come to me; nor Mary's part to wait upon the ordinances, which my soul thirsts after; therefore my chamber is like the *sanctum sanctorum*, where wittingly none may enter but the high-priest of our profession the Lord Jesus. I did not think that there had been so much ignorance, impotence, impatience, ingratitude, pride, inordinate affection to creature comforts, revenge, diffidence of God, self-love, and iniquity of all sorts in me, as I find there is; who am not only a poor sinner, but sin itself, a very mass of sin. I find it very hard to rely nakedly on God's goodness, not to feel the heat of persecution, not to be careful when all is taken away, Jer. vii. 17. Lo, so this darkness and filthiness of spirit is only discovered by the light of Christ, by whose lowliness in washing the apostle's feet, I see my loftiness and want of condescension when I had power; by his patience my many passions and heart-risings against instruments; by his obedience to the death, my reluctancies; by his faithfulness my former back-slidings; by his fruitfulness, and doing good, Acts x. 38, my barrenness and the little good I did when I had opportunity; and by his liberality, my penuriousness; whereby I adore and acknowledge his justice that he hath most righteously deprived me of my liberty and estate? all which drives me nearer to Christ, and makes me take faster hold of his righteousness. I now understand (through grace) how precious he is; 1 Pet. 2, 7, if it were not for Christ what a miserable condition were I now in? that might suddenly be sent to contend with the wrath of

God in everlasting burnings; and this makes me love Christ the more, having forgiven me more than others: and having had ten thousand talents forgiven me, I would forgive any wrong doers, and this keeps me humble and from censoriousness. I bless God I have ransacked into every corner of my soul, I have with David, Job, Esay, and Paul, bewailed my hereditary disease and heart-corruption. I feel it as a rotten tooth that aches, would fain be rid of it, have condemned myself for it, cried out against it, as the ravished damsel, Deut. xxii. 26. The like for sins done in my inclination, which by preventing grace are secret and only known to God; and I have mourned over my secret sins, only known to God and myself; over the sins of my youth, which were committed faster than can be named; for those which I did not know to be sin, and those that I have forgotten; and especially for my actually known sins, committed against love and light promises and covenants. I have confessed them all with a heavy, bleeding, broken and contrite spirit, and O that I had all sin, as sin, in a greater execration; my grief is for having offended so gracious a Father, that will not damn me for it; if there were no hell nor judge I would rather die than willingly offend him any more, and I cannot satisfy divine justice for one vain thought, therefore I fly to Christ, and close with him upon a free promise as a poor penitent sinner; no merits but the merits of my Saviour; I take in whole Christ, and not one drop of my puddled water shall be mingled with the ocean of his pure and perfect righteousness; and I give up myself wholly to him, as by a deed of gift, to be at his dispose; and I know he hath received me, "I am my beloved's, and my beloved is mine," and all is mine, 1 Cor. iii. 22, death itself; I have a sweet certificate from heaven of the pardon of sin, justification, reconciliation, and adoption. I know God's heart and his eyes are upon me perpetually, 2 Chron. ii. 15, that no tender father or mother can have so special a care of any sick imprisoned child, as he hath of me. I believe that God who hath given a property to the needle to keep fixed, though the ship overturn, will keep me faithful to the death, and that I shall receive the crown of life, and stand with as much confidence at the great day, as if I had never sinned; and herein I am confirmed by the testimony of the Spirit, and Scripture evidences.

"Blessed be God I do love the saints, every one that suffers in this cause is as dear to me as my own soul, my sighs have been many, and my heart faint, since I came hither, not for my own condition (for it is happy) but for the afflictions of Joseph; scarce a poor saint permitted to breathe in Irish air: those that will not swear and be drunk, or have prayer in their families, are counted fanatics, Esa. i. 15. I have a dear respect to all God's commandments, spiritual joy is no stranger to me; I love the word and ordinances more than my appointed food. I desire that all my thoughts, words, and

actions may please God, and that all that he does may please me : and I do freely forgive my adversaries, the Lord herein increase my faith, Luke xvii. 3, and I bless God I have a quiet conscience as to the world, and which is good also for being justified by Christ, apprehended by faith. I have peace with God, Rom. v. 1, and so I descend to the cause for which I am in bonds, which is as good as ever it was ; and I believe there is not a saint that hath engaged with us, but will wish at the last day that he had sealed to the truth of it with his blood, if thereunto called : for I am satisfied that it is the most noble and glorious cause that has been agitated for God and Christ since the Apostolical times ; being for truth, holiness, and righteousness, for our liberties as men and as Christians, for removing of all yokes and oppressions, for a gospel magistracy and ministry, and not only for the priestly and prophetic offices of Christ Jesus, but for his kingly also : the peculiar light and work of this generation being to discover and oppose the civil and ecclesiastical tyrannies intended upon the nations, by the pope's legerdemain, to exalt Christ as lord and king over mens' consciences, to magnify and make the law of God honourable, and authentic every where, and to give justice and mercy the upper hand. As I hear nothing what they intend to do with me, so I am not much solicitous about it ; I do freely trust God to make what bargain for me he pleases. I believe they are as angry with me as any man in the nations, because *littera scripta manet*, but their cause requires rather silence than eloquence ; as for that against monarchy unaccountable they will be ashamed to oppose it, that which teaches rhence, is the stating the case, for which I had vouchers, and warrants for every word, but now they plough with our heifers ; yet great is the truth and that will prevail, as for petitioning there is not any. I cannot confess any guilt, it is such a cause that the martyrs would gladly come again from heaven to suffer for, if they might, though too many object against me, 1 Pet. iv. 15. ' Let none of you suffer as a murderer ; ' I look upon it as the most noblest and highest act of justice that our story can parallel ; and so far as I had a hand in it never any one action in all my life comes to my mind with less regret, or trouble of conscience than that does ; for the blood must lie upon him, or the parliament ; and I am sure I had no more malice in my heart, than when I was in my cradle ; all that I can be sorry for, is, that I had not such pure and unbiassed aims at the glory of God and exaltation of Christ therein, as I should have had ; I neither did any thing *dubitante*, or *reluctante conscientia*, I was so far from a gain-saying conscience in any thing I acted, that I never scrupled in the least, and the generality of the people have since owned it : I was in mercy a poor advocate for Christ, and the people of England, and if by my blood their cause may be watered, I say (as Phil. ii. 17, 18.) to you and the rest of the church of Christ, if I be offered upon the sacrifice and service of your

faith, let us rejoice together : it has been counted shameful for soldiers to run from their colours, or desert their masters, and principles, but it is more odious for a counsellor to prevaricate and betray his client's cause : I am persuaded that all those that have had a chief hand and are now giving judgment against themselves, and all good people, in all those points which they formerly contended for, against the king ; as the lawfulness of the war, which was granted both here and at Edinburgh. The militia, negative voice, power to dissolve parliaments, conferring great offices (as king James said, ' So long as I make bishops and judges, I will have what religion and laws I please. ') As they are most abominable prevaricators of the honest interest, for they will wish at the last day, that they had been Jews, Turks, or Indians, for the greater light, the greater is their apostacy and ingratitude, 2 Pet. ii. 21. and sure they will have a peculiar judgment by themselves ; for they do openly proclaim the cause of Barabbas before the cause of Jesus. Peter denied Christ, and Judas betrayed him, but it was before his passion and ascension, they never saw the wonderful works which our eyes have beheld ; but what shall we say, if the treachery of Judas help forward the work of our salvation, why may we not hope, that God is whetting his tools, and gone back to fetch a greater blow against his oppressors, Isaac must not die though the knife be at his throat, Gen. xii. 14, our case seems to be like theirs, under proud Haman the gallows was erected, but the royal seed preserved, Esth. vi. 13, Numb. 23, the story of Balaam is much upon my heart, the shout of king Jesus to reign in holiness and righteousness is among his people, I hope as much as ever ; and there is no enchantment against Jacob, therefore he must not be afraid ; I am persuaded we shall fare the better for the thousand curses we had between Chester and London, 2 Sam. xvi. 12.

" Now having endeavoured to satisfy you that the great work is over as to my eternal salvation, and my opinion of the goodness of our cause ; I shall further entreat your patience, to tell you that I am fully convinced, that next to that unspeakable gift of Christ, the greatest grace and mercy that God can bestow upon any of us, is to call for and enable us to lay down our lives upon this account ; suffering for Christ being a strong argument of his electing love, Acts ix. 15, 16, and a greater matter of rejoicing, Acts xxiii. 11, be of good cheer, Paul ; therefore he forbids tears for him upon that score, Acts xxi. 13, and I have charged my poor lamb not to wear any black for me (if she have wherewith to buy it ; ) for I shall be in white, Rev. vi. 11. the apostle rejoiced to be counted worthy to suffer shame for Christ, and would not but speak what they saw with the eyes of faith, and heard with the ears of the spirit, Acts iv. 20. and the v. 41, and Paul gloried in the tribulation, rejoicing in hope of the glory of God, Rom. v. 23, and took pleasure in reproaches, necessity and persecutions.



for Christ, 2 Cor. xii. 10, so Moses, Heb. xi. 26, for the recompence of reward which is God himself, Gen. xv. 1, and the times cannot be so full of terror and discouragement as the Scriptures are full of comfort and incitations in this particular, to us the Lord's prisoners, Mat. v. 10, 12, why are we sorrowful when Christ bids us to be joyful, Mat. x. 25, 27. there is no safety but to be on Christ's side, for the Son of Man shall come in his glory and the saints also, Mark viii. 33, 38, they are not the words of a child but of Christ, not spoken to afflict us, but for our animadversion; Oh this peridious generation! how will that word be made good to the amazement of our timorous professors, John xvi. 21. The axe or a halter will be less pain than the pangs of child-birth, John xv. 18, 21. we are in nothing to be terrified, 1 Phil. xxviii. 29, constancy in suffering for good principles is matter of glory in the churches, and tribulation will be the portion of our troubles, 2 Thes. i. 4, to the end is very precious, 1 Thes. iii. 8, we live if we stand fast in the Lord: I know you, and my dear brethren and sisters are of Paul's mind, if I die in my bed being a church member, you will by the rule of charity judge me happy; I cannot do you more service than to bear my witness in this cause of Christ wherein you are so much concerned, I find our text appropriate to our condition, Job xii. 23 to 27, Christ's death was like sowing of corn, which seemed lost, but was our life; so he that counts not his life dear for Christ, though the world count him miserable, yet he hath two special promises to be where Christ is, and that the Father will honour him, it is a following of Christ in dying for him, actively or in affection as appears, John xiii. 36. xxi. 19. by a conformity to his death, Phil. iii. 10. Rev. xiv. 3, some read which died for the Lord, as Rev. xx. 4, and xix. 10. which now is counted as bad as treason, Heb. xii. has an ineffable sweetness in it, ch. xi. is the little Book of Martyrs, xii. 1, the spirit says follow your leaders, he is a coward that will not follow such free examples; Christ and the saints behold you, and ye are witnesses for Christ as they were, but must forsake all sin, especially your Dahlahs, Herodias, and Rummons, and strive against it; and ye have need of patience, but ye will faint and be weary unless ye look unto Jesus and fear not, for he is as well the finisher of your faith as the Father of it, he despised the shame, what need you care if they say behold the head, or the heart of a traitor, when your better part is in heaven, and reproves us for being too parsimonious of our blood; we must be prepared for suffering 'errore sanctorum rigatur ecclesia.' Luther was troubled that he carried his blood to his grave, he loved the Christ's cross more than the 24 letters, and loved not half Christians, that were only for doing and not for suffering; and though our sin deserve death as from the Lord, yet our enemies mind them not, they punish us for being judges, advocates, and soldiers for our Lord Jesus, Psal. xxxviii. 20.

— "And as the spiritual man overcomes the ani-

mal, so I am reasoning myself against sense into a willingness to die, for either the times will be better or worse; is there not in probability a great flood of oppression and persecution, coming upon the godly; will not the righteous soul of a just Lot, be vexed with the horrible prophaneity, malignity, and contempt of Christ's pure ordinances, that abounds every where; we have heard justice and tyranny, truth and falsehood, the form and power of godliness pleading together, and judgment was given for God, and his people, but all seems to be reversed, and what was but an injury or nesciente before, is now a formal and material contempt, and despite to God and Christ, and the spirit of grace in whomsoever breathing; and what comfort is there in a son, if the ark be taken, 1 Sam. iv, 20, '21. she regarded it not, the blessing is to see our children with peace upon Israel, Psal. cxxviii. 5, 6, it is a mercy to be taken away from the evil to come, Essay vii. 1, bestowed upon Josiah as a favour, being tender hearted, 2 Kings xxiii. 19, it is a rich mercy to get into our heavenly house, and harbour before the storm come. 2 Cor. 5, how much more blessed to give our polluted blood for his sake who shed his most precious blood for us; and if the times prove good, for civil or sacred liberties: Moses envied not those that were to go into Canaan, because he was invested with a better possession, a heavenly country, Heb. xi. 16, if there be such glorious times to be expected upon earth as you and I have discoursed of, I am sure there is no less joy in heaven; and we that are there shall have no cause to envy our militant brothers; besides as for myself I can expect to do little for God, I am three parts dead, 70 being divided into four, the shadows of the evening are upon me, and aches and pains are inseparable companions, if now Christ should graciously accept of my poor crazy body, and bring me to an honourable and easy death for him, blessed be his name for ever, 1 Chr. xxix. 10, to 16. The heathen could say: Dulce est pro patria mori, pro Christo mori dulcissimum.' How did the Romans glory to die for their liberties, and alter for their Cæsars? And how glad are the poor Spaniards and Muscovites that they have a life, a wife, or a son, for their king: and how glad are the city that their feastings will be received. A popish friar told me lately, that if he were of my opinion for assurance of salvation, he would not willingly live an hour longer for all Ireland: yet counts too much fear this grim porter death, though when executed we go from the cross to the crown, Jam. i. 12. indeed it is below the profession that we have made, to be now troubled; in prosperity I would be a worm, but now the Lord makes us bold as lions, that being called to suffer after so blessed an example, we may think it an honour to pledge our master in his own cup, and commit the keeping of our souls to him in well-doing as unto a faithful Creator, 1 Pet. ii. 21, and 4, 19, for he will never leave nor forsake us, but will give us shoulders to bear what

he lays upon us, 1 Cor. x. 13, let us therefore who are the children of Zion be joyful in our king, as others, who one day will appear to be fanatics indeed, rejoice in them, for these present sufferings are not worthy to be compared with our future glory, Rom. viii. 18.

Sir, I bless God I have an invincible peace and a secret joy surpassing my expression; and I press towards the mark, Phil. iii. 14, yet divine cordials are not constant, but often some fainting fits, and despondencies; the spirit bloweth where it listeth; where it is not comforting it is supporting, Esay ix. 29 and lxi. 10, if I were not very feeble, how could God's power appear in my weakness. I bless his name that his arrows are not within me, nor do the terrors of death take hold upon me, as Job vi. 4, for I never was better as to the frame and temper of mind and body, than since my restraint; without him. My cousin Harrison is very full of spiritual comfort, as the gentleman jailor tells me, and bids me cheer up, and indeed it will be a mercy if those who are called forth to testify for Christ prove courageous, as Jos. i. 9, but truly as for my part, it does not lie on that side, I fear least I may be too much exalted with the honour of it though I know the Lord can soon withdraw; we live by faith and not by sight, our happiness is in our union rather than in communion and sensible gusts; and I rather fear a lingering death with severity, some for banishment, Ezek. vii. 16, &c. but let the Lord do with me as he pleaseth, as Job said, 1 Chr. xix. 13, 'Omnia co-operantur in bonam,' Rom. viii. 28. So having unbosomed my heart unto you, that you and such whom you judge faithful and secret may the better spread my condition before the Lord, I would intreat you to beg for me more particularly. 1. That God would set home upon my heart, and fulfil in me with power your sweet Scripture, for which I heartily thank you, 2 Tim. i. 7, 8, 9, 12, that I may not be afraid of their terrors, nor troubled, but may sanctify the Lord at that time, and be able to answer all opposers, that they may be ashamed when we suffer for well-doing, 1 Pet. iii. 14 to 18. 2. That I and the rest of our brethren and companions in tribulation, and in the kingdom and patience of Jesus Christ, for the word of God and his testimony may be strengthened with all might according to Christ's glorious power, unto all patience and long suffering with joyfulness, as Paul prayed for the Colossians, Col. i. 9 to 14, being filled with knowledge, wisdom, and spiritual understanding, and feeling those grounds of joy as an inheritance of light, and deliverance from the power of darkness: that we may be 'testes' and 'contestes' to agree in our testimonies, and not disparage so good a cause. 3. That we may be ready not only to be bound but to die for Christ, and the vindication and justification of his evangelical doctrine; we have made high profession and confession of the everlasting gospel, and it is a blessed thing to believe with the heart, and confess with our mouths, and in our lives and by active martyrdom, as Brooke,

Ireton, Hampden, Pickering, and others have worthily done, who are safely arrived, expecting us, and we are yet upon the waves; but the most excellent, honourable, rich and fruitful, confession of Christ, whereby we can make the most efficacious demonstration of our election and faith in Christ, and love in his glorious person with most supreme illustration of God's glory, is to lay down our lives as the martyrs did to seal and confirm the truth of our professions with our blood, for the cause of Christ, and safety of your brethren, Rom. xvi. 4. 1 John iii. 16, as our blessed master, after he had confessed and preached the glory of God, and our salvation, confirmed and approved all by miracles, and his most holy life made a good confession under Pontius Pilate, 1 Tim. vi. 13, without which all had been ineffectual: So I have often thought for the discovery of hypocrites, cementing of the saints in more concordant affection, trial of faith, exercising of patience, and love to Christ, and for many other glorious ends, God would call for some of his children's blood, which will be the greater favour to them whom he shall count worthy of it, because I think this will rather be a Julian than a Neronian persecution, always provided that we be found in the doctrine of the covenant of grace, that God does not love us because we live soberly, righteously, and godly in this present world, and are willing to forsake all, and lose our lives for him.

But because he loves us, and has singled us out from the world, therefore he enables us so to live, and to do singular things for his honour and glory, and willingly to follow the Lamb whithersoever he goeth, Rev. xiv. 4, for the love of Christ constraineth us, 2 Cor. v. 14. O that we had more enlarged hearts for our king Jesus. 4. (That you may fully hit my condition) I have some trouble upon me concerning the loss of my temporal estate, especially for my poor, tender loving wife and child: I was a purchaser, and had a stock of cattle, and being wrongfully made prisoner two months before any speech of a king, I was surprized and could save nothing, nor get 20*l.* of my estate since Michaelmas last. They promised to bear my charges to London, but at Chester I was forced to borrow money, or must have come a foot: therefore pray be earnest with the Lord that we may take the spoiling of our goods more joyfully, knowing that we have in heaven better and an enduring substance, Heb. x. 34, and that we may not faint at these momentary afflictions, which work so well for us (wherein riches and honours are not so) according to that passage, 2 Cor. iv. 3 last verses, and be affected with eternal joys. It is said that I shall be put down into the hole for non-payment of great fees: my comfort is that God will be with me, there they cannot shut out God's spirit from me, which is an everlasting spring and Jubilee; nor will that be so bad as Jeremiah's dungeon, nor as Joseph's irons which entered into his soul, though indeed we are sold by our brethren as Joseph was, that the Scripture may be fulfilled, 'The

'brother shall deliver up the brother to death,' Matth. x. 21.

I know not how to conclude, not knowing when I may have another opportunity to converse with you, I am overjoyed to think they cannot reach my soul, and that our cause is invincible, and it will be a happiness if God see it good that none might suffer death, but such whose souls are out of danger but being upon the account of civil liberties as well as spiritual, our only wise Father will order all for his own glory, and this only silences all murmurings, and master save thyself, that what he pleases must needs be best for us; he being infinite, wisdom, love, power and goodness. Had the king made his way by the sword, we might expect his sorest strokes; but for the men of Keilah to deliver us up for the parliament to sacrifice us, these men that sit by a Commonwealth Writ, for whose privileges we adventured our all, and who cannot condemn us but must give up the cause, and give judgment against themselves, and all the good people in the nation; let the Indians judge of it, if any of the elect think hardly of us, that we do not *ex peccato*, and make our recantation, it will not last long, and it is no matter what others say, for they must receive their judgment at the bar of Christ, and we shall judge our judges; therefore let us not entertain damps of despondencies. My rejoicing is in a good God, a good cause, a good conscience, I have the justice of heaven on my side, and God's loving-kindness which is better than life, if we find injustice and cruelty here, men's law at Westminster will be adjudged treason in heaven, it will not be long before all tears shall be wiped from our eyes, and if our innocencies be not vindicated, and cleared up in this life, as Job's, Mordecai's, Joseph's, and Daniel's and Susanna's were, yet at the Revelation of the righteous judgment of God, it will appear before men and angels, that we are not Traitors, nor Murderers, nor Phanatics, but true Christians, and good Commonwealths-men, fixt and constant to the principles of sanctity, truth, justice, and mercy, which the parliament and army declared and engaged for; and to that noble principle of preferring the universality, before a particularity, that we sought the public good, and would have enfranchised the people, and secured the welfare of the whole groaning creation, if the nation had not more delighted in servitude, than in freedom. And if we now suffer a Martyrdom of body, we shall be some of the souls under the altar, crying, 'How long, O Lord, holy and true,' and though we can patiently digest their tortures, and leave all vengeance to whom it belongs, yet who knows but that our blood may be their poison; but then after all unjust sentences of men how sweet and honourable will the judgment of Christ be, Matth. xxv. ('Euge bone serve') of entering into our master's joy, when the kings of the earth and the chief captains and dukes of Edom shall wish the mountains and rocks to fall upon them, Rev. v. 16. I bless God my poor wife

VOL. V.

does much encourage me, to be faithful to the death, and she is a meet helper indeed who helps her husband so to heaven, as in a fiery chariot; she is one who bears an unfeigned love to Christ and all the Saints; I treat your tender care of her and my child, 'providebit Deus,' Jer. xlix. 11. I shall leave her that Scripture, and Isa. liy. 5 to 8, while they cannot take away by confiscation; when we were in the storm we took our leaves each of the other, and though we have not paid our vows at Bethel, yet I trust (as was then promised) we shall be willing to go to Christ if he call through a sea of blood. But, O the infinite wisdom and love of God, and the unsearchable riches of his grace, that if I had been drowned the malignants would have said, though he escaped by land, yet divine vengeance overtook him at sea; that now he should vouchsafe me (poor me as Gideon said, Judges vi. 15, one of the meanest lawyers in Westminster-Hall) the honour of bonds and an effectual if not effectual Martyrdom for being an advocate for my blessed advocate and the good people of England.

I have been the larger not knowing what use this may be of, if my mouth should be stopped; if you hear any report of me contrary hereto believe it not, so you have my heart; and I had rather be buried alive, than my tongue or hand should differ from it. O pray much for me, and pray again and mend your prayers, as I have great need to do, if you know what pitiful poor short and confused prayers I make in a day; yet 'Father into thy hands I commend my spirit' is a prayer, no period better than prayer, therefore now unto him that is able to keep you (and me) from falling, and to present you (and me) faultless before the presence of his glory with exceeding joy: To the only wise God our Saviour be glory and majesty, dominion and power now and for ever, Amen.

Yours for ever in our Dear Redeemer,  
JOHN COOK.

*A Letter written by Mr. Justice Cook from the Tower to his Wife.*

My dear lamb, blessed be God for Jesus Christ, and for a prison, where I find much of his comforting presence; tell sister Jones that she keeps but two or three Sabbaths in a week, but in prison every day is a Christian Sabbath, not only to cease from sin, but to praise God, singing Hosannas and Hallelujahs. I can but smile to think that they cannot hinder me from preaching, for I preach twice every day to myself, and yesterday, blessed be the Comforter, my heart was hymful of joy and consolation, from Psal. lxxiii. 25, 26, wherein I observed three points or doctrinal conclusions.

1. That a saint should love and esteem nothing but God, and for God; all this course is vain but what aims and tends to God's glory, 1 Cor. x. 31, a husband, wife, child, friends, and all creature comforts are to be loved so far as we see God in them; as the creatures do not serve us but God sustains us in them, and

4 M

by them, so our affections and desires must not be fixed upon them, but terminate in God; as the waters in the river never rest till they return to the sea, so our loves must only pass by the creature, and settle in God; and the more we see the image of God in any one, there our love is to be most in the Lord, and for his sake this love is the greatest weight of our souls, and transforms into the nature of the thing beloved, let us endeavour to put out more acts of love to God in Christ, Cant. i. 16.

2. From those words, my flesh and my heart forsake me, but God is the strength of my heart, the chief residence of the soul being in the heart, I observe, That there is something more dear to a saint than his own soul, which is the soul of his soul, and the life of his life, and that is Jesus Christ, who dwelleth in our souls by his spirit, Rom. viii. 10, 11, for as the body is dead when the soul leaves it, so the soul is dead without Christ, which may teach us two lessons. 1. To love Christ more than our own lives or relations, because he is the soul of our souls; thus did Moses, Exod. xxxiii. 32, and Paul, Rom. ix. 3, they preferred the glory of God in the salvation of their brethren before their own souls, if it could have been, which is a Christian duty; though very hard; and if divine justice should say to us at the great day, the soul that sins must die: we may say, why then did God punish our Lord Jesus who is the soul of our souls, more dear to us than our souls, and if God had seen it good we had rather have suffered in our own persons to have saved him; but we not being able to undergo the wrath of God, that innocent and immaculate lamb was put to death, who is the heart of our hearts, the soul of our souls, and the spirit of our spirits; for justice is more than abundantly satisfied, much more than it our wills, souls, and bodies had suffered, and the debt was all paid together which had always been paying if we had gone to hell, for as to Christ our salvation is all peace, strict justice, who felt nothing but extremity, the Father would not spare him, Rom. viii. 32, but as to us it is all mercy that his satisfaction should be accepted for us, and that thee and me, and dear daughter too; and sweet love I trust should be vessels of that mercy and free grace, O blessed be his glorious name for ever.

3. My meditations were principally carried out from the joys of heaven and from those words, Whom have I in heaven but thee? and thou art my portion for ever, I was ravished with this consideration, that the joys of heaven are eternal: or thus, The saints pleasures have a beginning, but no ending. No doubt but this is infinite matter of joy to Abraham, and all the saints in heaven, to think that they shall continue in their joy and glory, not 100 or 10,000 millions of years only, but for ever, that when they have been there 10,000 millions of millions of years, as to what remains it will not be a minute, but then we begin our felicity, therefore Christ calls it a life eternal, Matt. xxv. 46. Therefore

if a man could live here 1,000,000 millions of years, enjoy his heart's desire, and all the variety of pleasures which this world can afford, and afterwards be deprived of Paradise, or be damned, what a sad bargain would that be; for the saints are all that while in heaven, and shall be there for ever, and if a man might be always younger and live here for ever if such a thing were possible, yet could not that content him, because he is capable of good; and if it were put to the choice of an illuminate Christian whether to live here 1,000 years in health, wealth, and all that soul and body can desire, or to be in heaven but one day, he ought to choose the latter: Ps. xlviii. so one minute's being in heaven is to be preferred before a perpetuity of all worldly pleasures, for to be absent from the Lord is more grievous than all human delights can be comfortable, if it were but a pretty good condition, if men were sure always so to continue it would be comfortable: therefore to think of an everlasting crown of glory, is a soul-melting consideration.

It then this life be not a minute in comparison of the perpetual life of the blessed souls in heaven; how greatly are they to be blamed that for a little vain honour, flattering pleasure, or the momentary sensual delights of this evil world, squander away their precious souls. 2. As the joys of heaven are eternal, so they are exceeding great: If the men of the world which have their portion here, Ps. xviii. 14, have such stately houses and pleasant palaces and delights, shall we not think that God hath provided inestimable treasures and pleasures in the world to come for his children: for whom do earthly parents treasure up, but for their children; but if we could but apprehend what they are, they are not the joys of heaven, for no heart can conceive what God has prepared for them that love him, 1 Cor. ii. 9, the eye hath seen much, and the ear heard more, and the heart may conceive much more, but eternal pleasures are inconceivable, yet the spiritual eye hath some glimpse of it: a poor saint finds more solid zeal and joy in a crucified Christ, poor and naked and despised in the world, than all the dukes of Edom; their rich and glorious pomp and magnificence; but all the saints living here have not so much joy and splendour as the least saint hath in heaven: the scripture mentions three heavens, where the fowls are, the starry heaven, and the heaven of heavens, 1 Kings viii. 27, the sun is conceived to be 300 times bigger than the earth, and every star bigger than this lower world, and that all the earth is but as a mote and not so big as a fly in comparison of the Imperial celestial heavens, where the souls of the saints are with God and Christ; and by the largeness of the place we may guess at the greatness of the joys and pleasures, that the Elect are but few in comparison of those who shall be turned into hell, Ps. ix. 17, as it were thrust into a hole together, Matth. xxv. 23, our Lord's joy can be no little joy, and it is too big to enter into it. Next I consider wherein the

substance and essence of heavenly joys does properly consist by 1 Cor. xiii. 12, it seems much to be in sight and knowledge.

1. For sight, to see God face to face, to see the beautiful person of our dear Lord Jesus, to see all the blessed saints and angels, and to be one of them, how joyful is the thought of it; for if the damned (between whom and the saints there is a great gulph fixed, Luk. xvi. 26.) shall see Abraham and the prophets in the kingdom of God, Luke, xiii. 28, when themselves are thrust out (poor saint-haters that now persecute the heirs of glory, and scorn their companies, would then feign crowd into heaven with them) much more the elect themselves; but the difficulty is, how we can see spirits with bodily eyes, and bodies with spiritual eyes. I rather think that Job xix. 25, 27, is to be understood of Jesus Christ, whom Job shall see with the eyes of his body, and by the eyes of our souls we shall see God the Father and the blessed spirits; and our comfort is that we shall for ever be with the Lord. But here the scripture hath no tongue to speak, we must not too curiously inquire for knowledge, it is a wonderful expression, we shall know even as we are known, God knows us perfectly and what shall be our last thoughts, Psal. cxxxix. 1, 2. All the saints upon earth do not know so much as one saint in heaven, where faith is turned into vision, and hope into fruition; then shall we know the love of Christ which passeth all knowledge here below, Ephes. iii. 19, how all the love that ever God vouchsafed to the world, is but as a spark to the oven, red hot in comparison of giving Christ; but I believe we shall never know God comprehensively (but apprehensively) that is so much of his glory as we shall never know more, for there will be new springs and fresh discoveries of his infinite grace, glory, goodness and perfections streaming forth continually to us, that will be as everlasting fountains of joy and glorious rejoicing to our souls and bodies; as one at sea sees a great way, but not to the end or bottom of the sea, for we shall know as much of God as our heads can hold, and love God as much as our hearts can contain; and no doubt but there are different degrees of glory in heaven, as the saints know more or less of God, whereas when vessels of several sizes are cast into the sea, they are all full, but some hold more than others, 2 Cor. v. 4. God works in our hearts as engravers upon gold or marble, and the more of his image he stamps upon us in this life, the liker shall we be to him in glory, but every saint shall have his own fulness of knowledge.

3. I think that heavenly joy does much consist in the will, in the transformation, of our wills into the will of God; for as we heard an excellent sermon from 1 Cor. vi. 17, at Northampton, he that is joined unto the Lord is one spirit; for I believe that mystical oneness which our dear Lord so sweetly prayed for Job. xvi. 11, 21, 22, is meant of oneness in will and affections, when the soul shall have all that it can desire and nothing but what it does

desire, and shall will nothing but what God wills, and not only to be satisfied with the will of God, but to taste a sweet complacency and delight in it, that it is infinitely best to be there.

1. This transforming of the will proceeds from the apprehension of divine love, where the soul finds that God has loved it from all eternity, that his eye and his heart are perpetually upon it for good, and knows that it is a free, pure, unchangeable and eternal love, this causes an eternity of joy; and a love is the sweetest grace in the heart (the very sugar of the soul) that makes a heaven upon earth, where it is without dissimulation and spiritual, so heavenly joy will consist much in love, which must needs flow from sight and knowledge, for as Paul says, 1 Cor. ii. 8, it is only ignorance of God that makes so many to oppose the way of truth and holiness; so the sight of divine glorious beauty and the knowledge of infinite wisdom, power, love, and goodness in Christ, causes the soul to love God, and Christ, and the spirit, much better than itself: for if the spouse be sick of love here, Cant. v. 8, and if the fire of love constrain militant saints not to live to themselves, 2 Cor. v. 14, ingenuity being the great principle of the gospel not to work for life, but from life, and to do all from a spirit of love, much more the saints triumphant: but the more I think of this blessed state of glorification, the more I am at a loss in it, Psal. xvi. 11, in God's presence there is fulness of joy, and at his right hand there are pleasures for evermore; and David says, Psal. cxviii. that they that be wise shall shine as the brightness of the firmament, and as the stars for ever and ever; but one star differeth from another in glory; and Matth. xiii. 43, the righteous shall shine as the Son in the kingdom of their Father. And our Lord says, in my Father's house are many mansions, and Paul calls it, a far more exceeding and eternal weight of glory, 2 Cor. iv. 17, and a building of God, a house not made with hands eternal in the heavens, where we shall be so soon as the soul parts from the body, 2 Cor. v. 1, 3, and that it is an inheritance in light all light and no darkness, 1 Cor. xii. and that the saints shall judge the world, and when Christ shall appear we shall be like him; for we shall see him as he is, 1 John i. 2, in the new Jerusalem there shall be no sorrow, no crying, no pain, Rev. xxi. 4, and the gates of the city are pearls, and the street is pure gold, Rev. 21, the glory of God lightens it, and the Lamb is the light thereof, ver. 22, in it there is a pure river of water of life, and a tree of life, which bears fruit every month, Rev. xvii. 1, 2, and there shall be no curse, there, and there shall be no night, and we shall reign for ever and ever, ver. 5. All these are soul-ravishing considerations, and I have sucked much comfort from Psal. xvii. 15. I shall be satisfied when I awake with thy likeness; and 1 Thess. v. 10, who died for us, that whether we wake or sleep we should live together with him; therefore let us comfort ourselves and edify one another with these words, and Mr. Bulton's text, Heb.

xii. 22, 23, it is sweet also to consider of the glory of the body, 1 Cor. xv. 42, 43, it shall be an incorruptible, glorious, powerful, spiritual body, there will be charily, agility, penetrability, impassibility, no hunger, no cold, it shall be fashioned like unto Christ's glorious body, Phil. iii. 20. What a comfort is it to thee and me that have such crazy bodies; ulcerous Lazarus shall be as sound as a fish, and we shall have an everlasting spring of health and strength which shall never decay.

"Use. Let this teach us more to mind eternally, to study the joys of heaven, that we may receive a full reward, 2 Esai. to 8, as Mr. Whitchell once exhorted Oliver in every thing to mind and eye eternity; for they are the true men and women that will be so at that day, the pleasures of this world are so far from satisfying the understanding and which are capable of God, that they cannot satisfy any one sense; never any music so sweet, but a man will desire to hear better, to object so beautiful, no meat so pleasant, but a man will covet to see that which is more lovely and tastes sweeter, Eccles. i. 8, I say that book and Canticles well, that the spirit may convince us of the vanity and vexation of all creature-delight, and of the fulness and excellency that is Jesus Christ, the best condition in this life is but a bitter-sweeting, all our comforts are impure mixt with wormwood, no rose without thorn, and the bitter is more than the sweet, but in heaven all our delights are pure and unmixed, there is perfect joy without any grief, solid comforts and no afflictive misery, no envy, no emulation which abounds here; for every Saint has what his heart can desire, it is a sinless, sorrowless, temptationless, oppressionless, sickness, needless and endless estate, where being once arrived we shall never fear parting any more, therefore (my dear sweeting) let us wait patiently and cheerfully for that blessed translation from earth to heaven; we must begin our heaven here, the more prepared to die, the better we are to live, so let us live, so let us die, that we may live eternally. If thee likest such poor breathings and broken meditations, thee mayest command more of them, I leave thee and me and my dear child and our Christian relations with thee in his arms who is in heaven at the right-hand of the Father, therefore we need not fear what man can do unto us, Esa. 51, 12. To him I am, thine for ever. Thy loving husband during this life,

JOHN COOK.

*Another Letter from Mr. Cook to a friend after Condemnation.*

Dear brother, beloved in the Lord, 'con-demnatu sum ad vitam,' and this is my cordial farewell to you and all Saints, from my Jeremiah's prison; to-morrow I shall be in eternal glory, in the bosom of Christ, where our father Abraham is, and a guard of angels will convey my soul thither. Never let God's people fear a prison any more, for the Lord's supporting or comforting spirit hath not been

absent from me since my Indictment. I writ a letter to you formerly, acquainting you with my spiritual condition, to which I refer you; and fearing lest wrong may be done to the cause when I am in heaven, I think fit to leave a few words with my dearest love to all Christian friends.

1. Upon my trial it came to this, that the judges said, that all have been treason since 1642, so that the lords and commons are not to meddle with the king. I said, that I acted obedientially by order from the house of commons, and the commons being the representatives of the people cannot commit treason, for there can be no trial of all the people. And as for any force upon the house in 1648, they were the only judges of it, and no inferior Court can judge of the lawfulness or unlawfulness of their acts or orders. But they said, all our acts and orders are treason. So that now it is brought to that it was in 1642.

2. I intend by God's assistance upon the ladder to bear my testimony for Jesus Christ to all his offices, and for a gospel magistracy and ministry, and to speak something so far as God shall enable, and will be permitted, for the good old Cause, or righteousness and holiness. I can at present only leave my dear love and respects for you and my dear sister, beseeching God, and not doubting but that we shall shortly meet in eternal glory. Company so spends me that I can write no more: I shall suddenly enter into the joy of the Lord, O blessed be his name, blessed be the Comforter, my soul is full of consolation. Farewell, farewell, Benedic in Paradiso. Yours for ever,  
For my dear brother F. JOHN COOK.

Some Particulars of the BEHAVIOUR and of the EXECUTION of THOMAS SCOT, the 17th Day of October, 1660, at the same place.

When he was in the Tower, a relation sent to know how he did; to which he returned this answer, that he had been very ill all night, and had some apprehensions that it might be unto death. But, said he, I was not at all displeased; for if it be the will of God, that I may not live his servant, I would die his sacrifice.

The first day that he came to Newgate, some friends came to see him, and asked him how it was with him; he told them, he was well; but he waited and much longed for a word of peace from God: but (said he) I bless God (though it is somewhat dark with me at present, and I know I have a very naughty heart) yet I have not one temptation to desert that good Cause, which God hath so signally (many a time) owned.

The next day, which was the day maj. gen. Harrison was condemned, some of his relations came to him, and told him, they supposed he had heard what dismal sentence was passed on him; and, O Sir, said one of them, my heart fails me to think how you will bear it. Why, said he, flesh and blood will recoil; but, blessed be God, I am not troubled at that; a

fit of an ague would cost a man more, I believe.

The day after he was condemned himself, his wife and other relations and friends came to him; O Sir, said some, how is it now? Why, said he, blessed, O blessed chains! I would not be without these chains. Indeed, it was a very dark, dismal, cloudy morning, I was brought to be content to perish. Truly, I thought I could not plead at all, my soul was so sad, because God hid his face: but I was resolved, said he, if I could have said no more, to tell the Court, That the cause was the Lord's; and the fault was not in the Lord, but my great personal unworthiness, that I could not assert it; and that though I did sink into the bottomless pit immediately, yet I durst not, no not for a world, but own that cause, which God had often honoured. But, said he, the Lord for your sakes did help me to say somewhat; but, truly it was but pitiful. I thought if I might have been suffered, (although I have not slept, to speak of, these two nights) I could have spoken three or four hours longer. And now, said he, as dark as it was in the morning, it is so bright, so quiet and calm, that truly I think, if I were to be executed to-morrow, I could sleep all night as well as ever. But (lifting up his eyes) Lord, said he, I would not be too confident: O pardon thy servant. But, being in a very cheerful frame, his friends and relations left him at that time, and, because of illness, could not visit him next day.

But on the next first-day of the week, being with him, he told them he found an increased strength. That day about noon, the warrant for execution was signed: at which time, he was desirous to have a reprieve gained, if possible: not (said he) that I expect life; but methinks my wedding garment is not quite ready: a little more time, that I may, as a bride, be ready trimmed. That evening 'twas told him, that sir O. B. would speak with him the next morning; and some told him, it may be that would prove an hour of temptation. Truly (said he) I bless God, I am at a point, I cannot, no, I cannot, desert the cause.

The next morning they two were together, the matter of their discourse I know not, but I remember when his wife desired to go to O. B. that evening, to see if he would be her dear husband's (or rather her) mediator to her majesty for his life. It may be (said he) sir O. B. may say, that I should confess guilt, and do the king some service. Prithce tell him, I would engage to live quietly; but for owing guilt, that I cannot do: for to this day I am not convinced of any, as to the death of the king, and that I went but too far, in asking the benefit of the Proclamation; and I cannot go any further, no not to save a thousand lives.

That evening came in two ministers: one, or both of them, (after they had talked with him a good while) I heard them ask, whether he did acknowledge his guilt? for they believed his owning of that, would be the most likely

(if not a most certain) means, to prolong his life. To which he answered, that although he had often, and that with many tears (and he thought with some brokenness of heart) sought the Lord to convince him of it, if he had any guilt in him, as to that particular action, (for which he was then in chains, and under condemnation) for, said he, I would not for a world die with one sin unrepented of: hut, said he, really, to this day I have no such conviction. But, said the Doctor, Sir, if any such do come in, will you tell us? Yes, said he, I profess I will, if it come in at the last moment, even at the gibbet, I will tell the world of it. And it is observable, that some of his last words were, that God had engaged him in a cause, not to be repented of, I say, not to be repented of.

The night before execution when he was in the dungeon, he was (as he had been that day) somewhat sadder than at other times; and one asked him, if any particular thing lay on him? he said, No; but the Lord was pleased to suspend his comforting presence: But, said he, (with an humble boldness, I would speak it) The Lord shall not put me off with any thing besides himself. After having spent some hours in prayer, as at other times, about midnight we left him, and his fellows, that they might get a little rest, for the support of their natural spirits; and in three or four hours his wife, children, and many other friends returned. When we came, we found them praying: As soon as col. Scroop had ended, Mr. Scot turned about, and opening his arms, he embraced his wife, and one of his daughters: Ah, said he, my dear ones, God is good, he is come, he is come! I am full, I am full, O bless the Lord for me, and with me! O my soul, and all that is within me, magnify the Lord! By and by he went to prayer himself; and one would have thought he had been (as it were) in heaven, his soul was so enlarged in blessing, praising and magnifying the God of his salvation. O! said he to his wife, I would not change this dark room for the best Star Chamber under heaven. He desired his friends and relations would not be solicitous for his body; but let them do what they pleased, and exercise what cruelty they would; saying, it was meet it should be so: And that the dead bodies of the witnesses must be unburied, that the Scriptures might be fulfilled.

Some part of his prayer was, to bless the Lord, that, as the Psalmist said, though he came in there weeping, and fearing that he had not yet been bearing precious seed, yet now they were returning rejoicing and triumphing, and carrying their sheaves with them. Call us not, said he, Marahs, (as she once said) but call us Naomes; for we came in hither (some of us) empty, but we are going out full: The Lord hath not writ bitter things, but good of us; for this is glorious grace, That we are counted worthy to suffer for God and his Cause. Oh! What shall we render to the Lord? We will take the cup of salvation, and call upon the

name of the Lord. Oh our souls, bless the Lord! and we do with our souls bless thee, that we have an eternity to bless thee in; for no less will satisfy our souls. And now, O blessed and glorious God! shall we be among thy Worthies? [meaning Harrison, Carew, and Cook.] If possible, let us attain to the first three; but if we attain not to so glorious a testimony as that, yet, O Lord! let us be among thy Worthies. We desire to glorify thy great and blessed name, that thou hast in any measure enabled us to encourage our hearts in the Lord our God, at such a time as this, when eighty are, as it were, in the flames: and the people spake of worse than stoning us. When some spake of the reproaches of the people, he said, he accounted that his honour. Being upon the ladder, he addressed himself to the spectators in the following manner:

"Gentlemen, I stand here a spectacle to God, to angels, and men. To God and angels, to whom I hope I am shortly a-going. And now, to you I owe it; to God, and the nation, and myself, to say something concerning each. For myself, I think it may become me to tell you how, and why I came hither: and something in the general, concerning my capacity. In the beginning of these troubles I was, as many others were, unsatisfied. I saw liberties and religion in the nation in great danger, to my best apprehension: I saw the approaches of Popery in a great measure coming in upon us: I saw—"

Upon which the Sheriff interrupted him in these words: If you will betake yourself to prayer, you may.

Mr. Scot replied, I shall not speak to reproach any—

The Sheriff interrupted him again, saying, You have but a little time, Mr. Scot, therefore betake that little time to prayer.

Mr. Scot replied, I shall speak—

The Sheriff interrupted him again, saying, I beseech you, Sir, betake yourself to prayer.

Mr. Scot said, It may become me to give an account of myself, because—

The Sheriff interrupted him again, saying, It doth not become you to speak any such thing here, therefore I beseech you betake yourself to prayer; it is but a little time you have to live: You know, Mr. Scot, that is the most needful thing.

Mr. Scot replied, 'Tis so—

The Sheriff interrupted him again, saying, Sir, but when you came upon the stage, you deprived yourself very much.

Then said Mr. Scot, I thought to tell you how I came hither—

Here the Sheriff interrupted him again, and spake to this effect, Every body knows that—

Mr. Scot said, Sir, 'tis hard that an Englishman hath not liberty to speak—

The Sheriff interrupted again, saying, I cannot suffer you to speak any such thing.

Mr. Scot said, I shall say no more but this, That it is a very mean and bad cause that

will not bear the words of a dying man; it is not ordinarily denied to people in this condition—

The Sheriff interrupted again, saying, Sir, you had a fair trial, and you were found Guilty.

Mr. Scot replied, 'Tis according to my mind to speak what may be said—

Here the Under-Sheriff interrupted, saying, It hath been denied unto your predecessors, and will be denied unto you.

Then he prayed as followeth:

"Holy Lord God, the great and glorious God of Heaven and Earth; King of Nations, and King of Saints: in both which capacities, thy poor and unworthy creature comes now to bear his witness in this great spectacle, before Thee, angels and men, O Lord, were it not for sin, none of these things had befallen this nation, nor my unworthy self: We have all transgressed and gone astray from thee by a perpetual backsliding; even all, of all sorts, conditions, ranks and orders of men: And among them none, none more than thy poor unworthy creature, who acknowledgeth the same here before thee in the face of heaven, and in thy presence, to which he is very shortly a going. That glorious grace, which thou hast been pleased to afford unto his soul in it. Thou art gone to the highest extent of mercy that ever was shewed to any of the sons of men. Thy poor servant doth acknowledge himself to be the greatest of transgressors. And thy glorious grace is magnified above all thy name, in what thou hast done for thy poor creature. But Lord, so it is, because such is thy good pleasure, such was thy design from eternity; through or in the great transactions that was between thee, and Christ thy blessed Son, and our blessed Saviour; that thou shouldest in thy dispensation, in the governing of thy church in the world. That thou shouldest glorify thy free-grace in pardoning of the sins, and in the salvation of some of lost mankind, which was the great master-piece of thy love, that thou shouldest chuse out of poor lost mankind one or other, it is of admirable and incomprehensible mercy: And that thou shouldest chuse thy poor creature as one in the number, is matter of adoration, admiration, is matter of eternal extacy, and is matter of thanksgiving for ever: And this is the comfort of his poor soul, that he shall have an eternity with thyself; thou hast so assured him, that he shall be blessing, honouring and magnifying of thee among a company of saints and angels, and the souls of just men made perfect. O blessed Lord, thou hast called him forth as a public spectacle to some, in a condition of shame and reproach; to others, of comfort; and to thy blessed self, as one that is a witness for thee, that hath served thee with all faithfulness in his trust and public capacity and employment. O Lord, thy dispensation to thy poor creature hath been wonderfully gracious, and merciful; and he must say to the praise of thy free grace—"

Here the Hangman stooping down to take



drink, which was reached up to him upon the ladder, interrupted him: Upon which Mr. Scot said, 'Prythee let me alone, I have not done'; then proceeded in prayer as followeth:

—"That this very condition to which he is now brought, he acknowledgeth, is the answer of his prayer before his going out of England. Thou knowest Lord, he did many times in prayers and tears seek thy blessed majesty, for counsel and for advice: whether it were his duty to stay and suffer, or to shelter himself abroad: And if it were thy will to take more honour to thyself, by his suffering than his living; thou wouldest be pleased to remand him back again, and bring him hither. And he hath observed thy providence checking of his way, and in preserving him all along until he came to this. O blessed Lord, thy poor creature doth acknowledge, that thy ways to his poor soul, have been of wonderful grace and mercy. It was a great mercy to him, that having had (by reason of many sinful temptations, and many inconvéniences: and many incessant businesses in the world, whereof he hath been a perpetual drudge) many years past; and he hath not had the convenience, though his duty: The Lord knows he had not the convenience, nor the heart, so to improve and keep his own vineyard, while he had been looking after, or keeping other's vineyards: Thou didst therefore all along (while he was abroad) give sweet opportunities, and precious seasons, (while he was abroad) of seeking thy face, and studying his soul's good concerning eternity, and the eternal pleasure by thy holy will: and he blesseth thy name, that thou hast been pleased to open to him, both the scripture and his understanding; and so to answer the one by the other, as that he is (through the grace of God) comfortably persuaded, that his eternal estate is out of hazard. But, O Lord, thou hast been pleased, all the while that his condition hath been doubtful, to make his comforts to his poor soul doubtful also; sometimes fear, and sometimes hope, have been mixed: Again, and again wanting those consolations that might support his soul to such an issue. But blessed be thy glorious name, the great God of heaven and earth, he hath been pleased to bear him witness to himself, to angels, and to all that hear me this day, this very day, thy poor servant that now stands to suffer, had joy and much consolation from God, and from his cause, more than ever he had before: I say again, to the praise of the free-grace of God, I bless his name, he hath engaged me in a cause not to be repented of; I say in a cause not to be repented of—

Here the Sheriff interrupted him, saying, Is this your prayer, Mr. Scot? desiring him to forbear those kind of expressions. Others also told him, that he contradicted himself, and spoke blasphemy.

Then Mr. Scot said, "I shall say no more but this; The Lord I do acknowledge, that this very morning in the Dark Chamber, I had very much of the presence of God; and from

thence I take consolation to myself, that his spirit is with me, and that he hath sealed unto my soul the decrees of heaven, at least persuaded my soul, that it will be well with me, and that I am out of all danger as to my eternal condition; and that I shall live and reign with him there, where all sin shall be done away, which is the growing glory of my soul, and all tears wiped away also; in the mean time I pray thee, O Lord, that thou wouldest remember England, and remember thy cause in England: and remember me with the joys of thy salvation in the instant of my departure; O Lord, it is a narrow entrance, it is a strait passage, it is an entrance into eternity. O Lord thou hast once to day shewed me something beyond it, something of the glory of God; I pray thee forsake me not while I am here and sensible, or afterwards in the passage of my soul; to thee I leave it, and to thy providence, and do acknowledge thy goodness to my soul, in fitting me to receive that good which thou in thy infinite pleasure, dost think fit for me; And therefore, O Lord, into thy hands I commend my spirit. Lord, I desire to have some more testimony of thy love, if it be thy blessed will: It is enough that I live upon what I had to day; but if it be agreeable to thy holy will, I would honour and eternally bless thee, if thou wouldest be pleased to shine upon me, with some more particular immediate discoveries of thy presence; but not my will but thy will be done. The Lord be pleased to settle the nation in peace, and in the power and purity of religion, and thy ordinances in purity: And, Lord, for thy son, that is the darling of thy soul; Be thou pleased to give him a glorious entertainment in the world; and let the kingdoms of the world, become the kingdoms of Jesus Christ. Lord, thou hast a cause in the world, dear unto thee, I pray thee own it; though it may not be owned in all places, and by all persons, yet religion is the interest of them all. O Lord remember the price of blood, that hath been shed for the purchasing of the Civil and Christian liberties. And remember thy enemies, that are not incorrigible enemies to thy truth and holiness; and give them understanding to see their error, and to turn to thee; a heart broken, and with humiliation, that they may seek God with their whole heart; that they may be a holy or Immaculate nation, a chosen generation, a peculiar people, zealous of good works, careful to shew forth the virtue of him that hath called them from death to life. The Lord call in all that belong to the election of grace speedily, into that number; Let no weapon formed against thy church prosper; But Lord remember Zion, if it be thy good pleasure, and repair the walls of thy Jerusalem. O Lord, thy cause lies near the hearts of thy people; And I hear thee witness, that I have this income from thee, as the return of their prayers; And that we are supported to bear witness for thee very cheerfully and with satisfaction. I desire to be found of thee in Jesus Christ: I do now abhor all my

sins, and renounce my services; and do account them all as dung. Lord thou knowest, I have desired to live, that I might serve thee better, and love thee more; but that I may be with thyself, Oh it is infinitely better: and to confirm that testimony that is concerning thy glorious will; And thy will be done in earth, as it is in heaven, by me and all thine; from henceforth, and for evermore," Amen.

His Prayer being ended, he was turned off.

Some NOTES taken of a SERMON preached by Mr. HUGH PETERS,\* the 14th of October, 1660, (after his condemnation) in the prison of Newgate, wherein he was much interrupted, by the coming in, and going forth, of strangers that came to see him, and the other prisoners, in the room with him, and so was constrained to break off the sooner; and though they are but brief heads, yet it is thought convenient here to insert them, for the better satisfaction of any, touching the frame of Mr. Hugh Peters at that time. This discourse was from,

PSALM xlii. ver. 11.

"Why art thou cast down, O my soul? and why art thou disquieted within me? Hope thou in God, for I shall yet praise him, who is the health of my countenance and my God."

After analysing the Psalm, he observed this Doctrine.

Doctrine. That the best of God's people are apt to be desponding.

This was the man's case in the whole 88th Psalm.

Also David's case, when he complained of the breaking of his bones, &c.

This was Christ's case himself, when he cried out "My God, my God, why hast thou forsaken me."

The reasons why the best of God's people, are apt to despondencies, are,

First, When something falls out from God more than ordinary, when God puts weight in sorrow and affliction, that makes it sinking; although that afflictions are heavy of themselves many times, yet it is the weight that God puts in sorrow, that makes it sink us.

Secondly, Over-valuing our comforts, putting too much upon wife, children, estate, or life itself, a man is apt to be cast down when he thinks of parting with them.

Thirdly, Our unpreparedness for sufferings, and afflictions that makes us despond. Alas I

\* When Peters, on the 27th of Jan. preceding, preached before his accomplice Monk, who was then on his slow and cautious march from Scotland to London, about the journey of the Israelites from Egypt to Canaan, and the *crinkledum crankledum* ways of the Lord, he little suspected in how short a time he was to receive this treatment; at the hand of the general.

thought not of it say some, it is come unexpectedly upon me.

Fourthly, We are apt to despond when our afflictions are many, when they are multitudes, when all is struck at together, name, estate, relations, and life itself.

Fifthly, When afflictions are of long continuance, a man can bear that burthen awhile, that he cannot stand underlong.

Sixthly, When afflictions fall upon the noblest part of man, which is his soul; then are despondencies apt to come in.

Seventhly, When we have more sense than Faith.

Now it should not be so, God's people ought not to despond.

1. Because it discovers impatience.

2. Because it discovers want of Faith, they lean not upon the rock that will not fail them.

3. It discovers want of Wisdom, &c.

4. We should not be thus, because it gratifies the enemy, who in such a case is ready to upbraid us, and say where is now their God? what is become of their God?

Now what cure and remedies are there for desponding.

This eleventh verse gives you two.

First, Hope in God, "Hope thou in God."

Secondly, Faith is set on work, I shall yet praise him, &c.

But more particularly take these directions.

1. Be careful of exercising faith, for no condition of man supersedes his faith, do all in faith, pray in faith, and hear in faith, &c. Now what is the exercise of faith but rolling upon Christ, and staying on him, here I will stick, if I perish I perish.

The miscarriages of Christians, is either because they have no faith, or else, because, if they have faith, they give it not food to live upon; Faith must go to Christ, as the liver vein, and fetch blood and life thence. We quarrel that we have not love, and patience, and meekness, &c. but the defect lies in our faith, if we had more faith, we should have more of all other graces.

Now what is the food of faith?

Ans. Faith will not feed upon every dish, not on a stalled ox or fatted calf; prosperity is not faith's food. But it will eat a word, live upon promises, these nourish faith, "I will never leave thee, nor forsake thee, all things shall work together for good," and the like promises.

2. Be marvellously careful of things below, measure things not by sense, or by a day, but by faith, and eternity; we are troubled at the loss of this and the other creature, and comfort, but what is the value of them, the over-valuing things is our mischief.

3. Go and tell the Lord Christ, I have a defiled conscience, and if thou dost not wash me I am undone for ever. See the necessity and worth of Christ; there must be something better to look at than what we lose for the present, something above estate, and life, and relations, and name. See the worth of Christ's blood, it

is worth all the world, because what the blood of bulls and goats could not do, his blood doth cleanse from all sin.

4. Keep close to the use of Ordinances much of our mischief hath come from neglects of this kind; the safety of a Christian lies in the enjoyment of Church-Communion, Psal. xxvii. 4. 5, and 6 verses. One thing I have desired of the Lord, and that will I seek after, that I may dwell in the house of the Lord all the days of my life, &c. for in the time of trouble he shall hide me in his pavillion; in the secret of his tabernacle, shall he hide me, he shall set me upon a rock; and now shall my head be lifted up above mine enemies round about me, &c. The greatest fears are dispelled there—you shall find before troubles pass over (for you expect some) it will be a hard matter to break churches, they are so fast chained together, and yet there hath been marvellous miscarriages amongst Saints in their church relations.—Finis.

He also during his imprisonment in the Tower, wrote some sheets of paper to his daughter, leaving them with her as his last legacy, containing in it very much sound and wholesome advice as to her soul's health. It carries with it such a savour as denotes it proceeds from a spirit that hath learned experience in Christ's school, and hath been acquainted sometimes with sun-shine as well as foul weather, it is too long here to be inserted, but if it be made public by itself, doubtless the experienced reader will be no loser by perusing this legacy.

SOME MEMORABLE PASSAGES of Mr. HUGH PETERS, in his Imprisonment at Newgate, and at the time of his Execution at Charing-cross, October 16, 1660.

Mr. Peters, as is well known, was well exercised under a great conflict in his own spirit, during the time of his imprisonment, fearing (as he would often say) that he should not go through his sufferings with courage and comfort, and said to friends, that he was somewhat unprepared for death, and therefore unwilling to die; something he said he had committed, and other things omitted, which troubled him, but though it was a cloudy and dark day with him for a season, yet the light of God's grace and favour would break forth at last.

And surely the favour of God did at the last appear, for a little before he went forth to execution (as many can testify) he was well composed in his spirit, and cheerfully said, I thank God now I can die, I can look death in the face and not be afraid.

As for that slanderous report which was too much received by good people as well as bad, to wit, that he was guilty of uncleanness. A friend coming to him in prison, put that question seriously and soberly to his soul, to which he replied, that he blessed the Lord, he was wholly clear in that matter, and that he never knew any woman but his own wife.

A night or two before he suffered, two of the

episcopal clergy, who as some report were the king's chaplains, came to give him a visit; they endeavoured to make advantage of the present temptations wherewith he was then assaulted, and to persuade him to a repentance and recantation of his former activity in the parliament cause, which they endeavoured to enforce upon him by a promise of pardon from the king, in case he would therein hearken to them. But though he was then much afflicted in his spirit, yet the Lord did help him to bear up with much courage against the insinuations of that sort of men, and told them he had no cause in the least to repent of his adhering to that interest; but rather, that he had in the prosecution thereof done no more for God and his people, in these nations, and with civility dismissing those visitants, he applied himself to some other ministers then present, whom he judged more able to speak a word in season to him under these great trials, wherewith the Lord was then pleased to exercise him.

Being carried upon the sledge to execution, and made to sit therein within the rails at Charing-cross, to behold the execution of Mr. Cook, one comes to him, and upbraided him with the death of the king, bidding him (with opprobrious language) to repent: he replied, friend, you do not well to trample upon a dying man, you are greatly mistaken, I had nothing to do in the death of the king.

When Mr. Cook was cut down, and brought to be quartered, one they called col. Turner, called to the sheriff's men, to bring Mr. Peters near, that he might see it, and by and by the hangman came to him, all besmeared in blood, and rubbing his bloody hands together, he tauntingly asked, 'Come, how do you like this, Mr. Peters, how do you like this work?' To whom he replied, 'I am not, I thank God, terrified at it, you may do your worst.'

When he was going to his execution, he looked about and espied a man, to whom he gave a piece of gold (having bowed it first) and desired him to go to the place where his daughter

\* "Peters had not the fruits of his prayer," (See p. 1133, *ante*, and the note) "for he neither departed so soon as he wished, nor in peace. He became himself a sacrifice to the triumph which he led as pontiff. They dealt at the Restoration perhaps too hardly with this poor good man." Burke's *Reflections on the Revolution in France*.

Bugnet says, "It was, indeed, remarkable that Peters, a sort of an enthusiastical buffoon preacher, though a very vicious man, who had been of great use to Cromwell, and had been outrageous in pressing the king's death with the cruelty and rudeness of an Inquisitor, was the man of them all that was the most sunk in his spirit, and could not in any sort bear his punishment. He had neither the honesty to repent of it, nor the strength of mind to suffer for it as the rest of them did. He was observed all the while to be drinking some cordial liquors to keep him from fainting."

lodged, and to carry that to her as a token from him, and to let her know, That his heart was as full of comfort as it could be; and that before that piece should come to her hands, he should be with God in glory.

Being upon the ladder, he spake to the sheriff, saying, Sir, you have here slain one of the servants of God before mine eyes, and have made me to behold it, on purpose to terrify and discourage me, but God hath made it an ordinance to me for my strengthening and encouragement.

When he was going to die, he said, What flesh, art thou unwilling to go to God through the fire and jaws of death? Oh (said he) this is a good day, he is come that I have long looked for, and I shall be with him in glory, and so smiled when he went away.

What Mr. Peters said further at his execution, either in his speech or prayer, it could not be taken, in regard his voice was low at that time, and the people uncivil.

**THE EXECUTION OF GREGORY CLEMENTS,**  
the 17th of October, 1660, at the same place.

Mr. Clements was very silent both in the time of his imprisonment at Newgate, and at the time and place of his execution at Charing-cross, only it is said, that he expressed his trouble (to some friends in the prison) for yielding so far to the importunity of his relations, as to plead Guilty to the indictment: and though he spoke little at the place of execution, yet (so far as could be judged by some discerning persons that were near him) he departed this life in peace.

**SOME PARTICULARS OF THE BEHAVIOUR, AND OF THE EXECUTION OF COL. JOHN JONES,** the 17th of October, 1660, at the same place.

*The Copy of a Letter sent from Col. John Jones, when prisoner in the Tower of London, to a Relation.*

I am very much grieved, to find (by the note I received from you) such dark and sad apprehensions upon your spirits concerning me: We are in the hands of the Lord, and what he hath appointed for us, will be our portion, and no man can frustrate his holy purpose concerning us; which I question not will be found to be in love, whatever appearance it may have to men. My advice is to you and all that love me, That (in case I be removed from you) you do not, neither in reality, nor outward garb, mourn for me; but rather rejoice, that my portion is in heaven; and that my dissolution or removal out of this earthly Tabernacle, is but in order to my cloathing with immortality, and possessing my eternal mansion; and to my being for ever with Christ, to behold his glory; and therefore that you do not behave yourself, as those that have no hopes but of this life.

Secondly, That you take off your mind from

me, and fix it unmoveably upon your eternal relation, the Lord Jesus Christ, in whose glorious and blessed presence, we shall meet ere long, to our eternal rejoicing; It is the goodness of the Lord to us, to remove all creature comforts from us, that our souls might have no resting-place to delight in, or to promise them safety; until we return to the ark of his testimony, the bosom of his love manifested and exhibited for us in our blessed Lord Jesus Christ. I write in haste, therefore excuse my abruptness. Thine in sincere love,

*Tower, Sept. 19, 1660.* JOHN JONES.

Let the first and last verses of Psalm 27, be constantly fixed upon thy mind.

Ver. 1. The Lord is my light and my salvation, whom shall I fear? The Lord is the strength of my life, of whom shall I be afraid?

Ver. 14. Wait on the Lord, be of good courage, and he shall strengthen thy heart; wait I say on the Lord.

*Some few living Sentences, that fell from a dying man, Col. John Jones, when he was in his chains in Newgate.*

Observing one of col. Scroop's children weeping, he takes her by the hand, saying to her, You are weeping for your father, but suppose your father were to morrow to be king of France, and you were to tarry a little behind, would you weep so? Why he is going to reign with the King of kings, in everlasting glory.

Speaking to a friend, that was to have accompanied him into Ireland, Ah! dear heart (says he) thee and I were in that storm together, going to Ireland, and if we had gone this journey then, we had been in heaven to have welcomed honest Harrison and Carew; but we will be content to go after them, we will go after.

Speaking of those that were gone beyond the seas, (O dear hearts, says he) in what a sad condition are our dear friends beyond sea, where they may be hunted from place to place, and never be in safety, nor hear the voice of the turtle; how much have we gotten the start of them, for we are at a point, and are now going to heaven?

Speaking of the sledge in which he was to be carried to execution; it is (said he) like Elijah's fiery chariot, only it goes through Fleet-street.

The time of his departure being come, this aged gentleman was drawn in one sledge, with his aged companion colonel Scroop, whose grave and graceful countenances, accompanied with courage and cheerfulness, caused great admiration and compassion in the spectators, as they passed along the streets to Charing-cross, the place of their execution: And after the executioner had done his part upon three others that day, he was so drunk with blood, that like one surfeited, he grew sick at stomach; and not being able himself, he set his boy to finish the tragedy upon colonel Jones; who coming up the ladder with the like cheer-

fulness as his brethren did before him, and being placed fit for execution, he proceeded to speak as followeth:

*Colonel John Jones's Speech upon the Ladder.*

There are two things that are necessary now I am going through this narrow gate or passage to the eternal majesty; I say, two things are necessary as to the occasion of my coming hither to receive my Father's good pleasure.

1st, Peace with God. 2ndly, peace with man.

I shall speak something to each of these; and, in the first place, speak something of the Court wherein I received the sentence: it hath been reported, as I was told, that I confessed this fact, and confessed that I was guilty of murder, as under those several expressions that are in the Indictment, viz.,

I desire to clear myself before the Lord, and before the world, in that particular; for should I grant that I was guilty in reality and truth of murder and malice, I should belye my own conscience, and draw upon me a greater weight than I could bear. But thus far I do confess, I was willing to make the work as short as I could; and because I would not stand so long, I told them I would take the first jury that came; and when a jury was called, then I did confess so much as I was convinced of, as to the matter of fact; I desire you will judge charitably of this that I speak at this time, as in the presence of the Lord, that it is not so really (viz. that I acknowledged myself guilty of murder), I had no such thing in my heart.

I must confess I very freely quit his majesty, considering what he doth in this case is the part of a loving son to a father, especially the judges telling him that it is the law; and I conceive that the Court did nothing but what they, to their best understandings, judged right as to law; therefore I freely acquit the Court, though there was not enough said to satisfy such a poor creature as I am, in so great and deep a point as that was: as for all others, I do not know any man on the earth, to whom I do bear any malice, but I am in perfect charity with all men, and I hope the Lord is in charity with me: and therefore, as I desire to have forgiveness myself from all those I have offended, even so I do freely forgive all those that have in any measure offended me.

The next thing is towards God, and it is that which should be last upon my heart: it is not expected that I should give an account here of my state and condition, for that is betwixt God and my own soul; and I do, through the grace and goodness of God, firmly believe that my redemption is wrought, and my pardon is sealed, and that I shall be immediately in my father's arms, and that I shall be translated and brought to behold the Lord Jesus Christ in glory, with comfort and fulness of joy.

Then he betook himself to his prayers.

*Col. Jones's Prayer.*

"Blessed Lord God, thou art the great opener, open unto my soul the Lord Jesus Christ, who will lead me into the ways of truth and life; O God save me, make good

all the pledges of thy love unto my soul; oh make all the promises which I have believed all the days of my life, make them now good unto my soul, giving me the full enjoyment of thyself: I desire to bless and praise thy name for this hour that thou hast brought me to, oh, what am I poor worm, that thou shouldest give me this opportunity to suffer for thy name, and to acknowledge thy mercies before so great a congregation at this place. Holy Father, Holy Father, oh that thou wouldest now rain down blessings from heaven upon thy poor creatures, that do hear and behold this action, this day; oh that thou wouldest sanctify this thing to them, and let poor England be a land of truth and happiness, O Lord let England flourish: and oh that thou wouldest make thy angel of light to go before thy people: good God we pray thee keep off those great judgments that hang over the heads of these nations, because they have sinned against thee: through thy name sanctify us, let not thy name be reproached. Dear Father, receive my soul, I am ready to come unto thee: blessed Father, into thy hands I commend my spirit; thou hast redeemed me, blessed be thy name, in that thou hast opened the treasures of thy love unto my poor soul. Thou hast given me this hope, whereof I need not be ashamed. Blessed be thy name, my spirit is full of joy. Oh Holy Father, holy Father, I pray thee let thy blessing come down upon thy poor people. Look upon me, Holy Father: stretch out thine arms to carry me over this brook. I pray thee stand by me, dear Father, I cast myself into thy hand, I commit my soul unto thee.

His prayers being ended, he said, Mr. Sheriff, I must needs return you many thanks for your civility.

*Sher.* Repl. I am glad to hear such an ingenuous confession, and that you make such an end, and that you have not gone into any railing language, as some others have done before.

*Some more Passages of Colonel John Jones in Prison.*

Col. Jones, the night before he suffered, told his friend he had no other temptation upon him but this, lest he should be too much transported, and carried out to neglect and slight his life, so greatly was he satisfied to die in that cause.

The day he suffered, he grasped a friend in his arms, and said to him with some expressions of endearedness, Farewell: I could wish thee in the same condition with myself, that thou mightest share with me in my joys.

After this he committed his soul to God, and as turned off.

Some Particulars of the BEHAVIOUR and of the EXECUTION of Colonel DANIEL AXTELL, and Col. FRANCIS HACKER, the 19th day of October, 1660, at Tyburn.

Being asked by some friends how he found himself fitted to encounter with death?

He answered, I can say nothing until I come to die, I dare not boast till I put off my armour, but desire your prayers until there be no more need of them.

Returning from his trial at the Court to his prison with a cheerful countenance, and his wife coming to him full of trouble, he said, Not a tear, wife, what hurt have they done me, to send me sooner to heaven; and I bless the Lord I could have freely gone from the bar to the gibbet. They had nothing against me neither by God's law nor their own law to condemn me; was it ever known that a man should die for such words, and further said, though men had judged, yet God had not condemned.

Some taking notice of his coarse lodging, he said, what matter is it to have a little dirty way, when we have a fair house to come into.

Then looking upon friends about him, said, if the sight of so few of God's people be so comfortable, what will it be to enjoy all the saints in heaven together?

Towards the close of that evening he went to prayer; (divers being present who admired the blessed frame of spirit that he was in) admiring God in all his appearances for his poor people, he laid all his comfort in the blood of a crucified Christ, and upon the covenant of free grace; he did heartily desire pardon for all his judges, jury, and those witnesses that had sworn falsely against him.

Returning again from the Court when he had received his sentence, he came into the prison very cheerfully with a bible in his hand, saying, I shall have the use of this book two days more, and then enjoy the fulness of the gospel to all eternity.

His daughter coming in to him, he said, Where hast thou been all this while, I thought thou hadst been ashamed of my chains; but they that will not bear the cross, shall not wear the crown.

A gentleman coming to visit him, said, shall I petition for your life? col. Axtell replied, Sir, you offer me to my loss.

The gentleman told him he was going for Ireland, col. Axtell said, Sir, pray remember my love to all Christian friends there, and tell them, said he, shaking of his chains rejoicingly, that you saw me in my chains, and I reckon all these links as so many pearls to adorn me, and I am sure they are so in Christ's account; and tell them that for that Good Old Cause which we were engaged in, under the parliament; I am now going to be their martyr; And as for the king, I wish him as well as my own soul. But they have merely murdered me, and they might as well have done it at the Tower, as have brought me hither to make this bustle; I wish my blood do not cry to the third and fourth generation. But I shall do them more hurt in my death, than I could do in my life. They had nothing in God's law nor their own to condemn me, the Court condemned me, but it was enough my name was Axtell. I wish that I may see them all in heaven.

A friend going into Gloucestershire, said to him, Sir, what message will you now send to the good people in the country?

Col. Axtell answered, remember my dear love to them all, and tell them that their prayers are answered. Bid them keep close to Christ, and let them not touch with surplus or Common Prayer Book; and bid them, whatever they do, love the image of Christ wherever they see it, if presbyterian, independent, baptized, or other; and take heed of striking in with any thing, that will strike out any of the offices of Jesus Christ.

Four of his fellow prisoners passed by his chamber door, as they were going forth to execution, and being denied sight of them, he called them by their names, and with a mighty fervent spirit, said, the Lord go with you, the angel of his presence stand by you, and then turning about to his friends, said, Oh! they are gone to heaven before me, but we will give them up to the Lord, and so went to prayer; and presently after he went to prayer again, saying, God hath said that he will make us joyful in the house of prayer: and many observed that he did perform the duty of prayer five times that day himself, wherein he laid himself very low before the Lord, acknowledging himself the worst of all the prisoners, and that he should have the least to say for God, and would say to his friends, say nothing of me till you see me on the uppermost round of the ladder.

His daughter coming in, he told her, that he had left Jesus Christ an executor in trust for her.

Having given an account to some persons for their satisfaction about his proceedings against the rebels in Ireland, said, I can say in humility, that God did use me as an instrument in my place, for the suppressing of that bloody enemy, and when I considered their bloody cruelty in murdering so many thousands of Protestants and innocent souls; that word was much upon my heart, Give her blood to drink, for she is worthy; and sometimes we neither gave nor took quarter, though self preservation would have said, give that which you may expect to have.

One coming in told him, that his fellow prisoners died nobly and cheerfully, (Well, said he, but how do they stand?) Answer was made, upon a ladder. Blessed be God, said he, it is a Jacob's ladder.

The sun shining into the room, he said, if it be so glorious to behold the sun, what will it be to behold the son of glory.

Laying his hand upon (his fellow prisoner) col. Hacker, he said, Come brother, be not so sad, by this time to-morrow we shall be with our Father in glory, and what hurt will they do us to bring us through the cross to the crown. Well, our God is the God of Newgate.

Then the officer coming to carry them down into the dungeon, he took his leave of many of his friends then present, saying, Love the Lord Jesus, love the Lord, and weep not for me, for God hath wiped away all tears.

And coming to the door of the dungeon, said, I am now going to my bed of roses, my last bed.

Many friends being with him, there was an eminent godly minister of the Presbyterian way; and col. Axtell taking him by the hand, said, I have one word to speak to you, it is much upon my heart, that one great cause why the Lord contends thus with his people, is for want of their love towards them that were not of their minds; to which the minister replied, Truly, sir, I think so too, the Lord help us, that wherein we see we have done amiss, we may do so no more. Then said

Col. Axtell, I bless God I have not much to charge myself with in this matter.

Col. Hacker then said, but I have much to complain of in that matter.

Col. Axtell, afterwards sitting on his bed-side clapping his hands, said, if I had a thousand lives, I could lay them all down for the Cause.

Whereupon another godly minister then present, asked him, What he meant by the Cause?

Col. Axtell replied, Sir, I tell you, I mean that Cause which we were encouraged to, and engaged in under the parliament, which was for common right and freedom, and against the Surplice and Common-Prayer Book: and I tell you, that Surplice and Common-Prayer Book shall not stand long in England, for it is not of God.

And afterwards, thinking that he should not die that day, desired some retirement; but news coming that he must die within an hour, (though it was not so) he quickly made himself ready to go, and looking upon his gloves, said, These are my wedding gloves, my mortal must marry immortality.

Some friends going to see him the night before he was executed, found him at supper very cheerful, and many being present, he said, Take heed of temporizing, &c. for that hath been the occasion of great evil. Then speaking to an officer there present, that had continued till of late in the army, said, Brother, thou hast been greatly guilty herein, the Lord forgive thee, thou hast a great hand in this.

To which the person replied, I confess I have been so too much.

Col. Axtell answered, There is yet mercy for thee, if the Lord give thee repentance.

Moreover said, The Lord forgive that poor wretch, lieut. col. Huncks, for he hath sworn falsely in his evidence; and now is that word made good, that "Brother shall betray brother to death."

And speaking of col. Tomlinson, said, Ah! he hath appeared five pound lighter in twenty than I thought him to be.

And for col. Huncks, he was the uncivillest of all about the late king, and yet he comes in a witness against Hacker and me.

That evening many friends being with him, he prayed with them, and in that duty the Lord by his Spirit filled him with excellent expressions, to the great refreshing of those about

him. And bewailing the great divisions amongst God's people, he said, Lord, if they will not live together in love, thou wilt make them lie together in sufferings. Then minding their present condition, said, Lord, death is the king of terrors to nature, but it is a believer's choice friend, it is thy highway to lead us into glory.

After prayer, taking notice of his daughter, he said to her, Get an interest in Christ, and keep close to him, he will be a better father to thee than I, and so took his leave of her.

The day of their Execution being come, several Godly Ministers spent some time in prayer with col. Axtell and col. Hacker; and many friends coming in to pay their last respects, col. Axtell seeing one of his familiar friends and companions, said, My dear brother, thou art better than I am, and yet I must go to heaven before thee for all that.

He very cheerfully said to divers then with him, Dear friends, rejoice, I am going where ye shall be also, yea, where we shall be for ever with the Lord, and never part, and be without any more change; I beseech you follow the Lamb wherever he goeth; though he may lead you in a harsh, dismal and difficult way, yet at last he will bring you into a pleasant path, and cause you to lie down in green pastures, in the land of rest; "Oh be faithful unto the death, and he will give you a crown of life," as he hath given to your suffering brethren.

Oh! all that we have, or do suffer, is but to make Christ and heaven more sweet, dear and glorious to us; all the sad steps we shall tread on this ladder, are but to mount us to heaven, for at the top are angels ready to receive us, as were on Jacob's ladder. All the things I meet with move me not, I bless my God, for I am sure to fight a good fight, and finish my course with joy.

Afterwards taking his leave of his son, embracing him in his arms, he said, My dear son, fare thee well; I must leave thee, get an interest in Christ, and love him, nothing else will stand thee in stead but an interest in him.

Then calling for his Bible, he hugged it, saying, This hath the whole Cause in it, and I may carry this without offence. And calling to a friend, he desired him to remember his love to the congregation, where he was a member; and after took his leave of all his friends, exhorting them with much cheerfulness to love the Lord Jesus Christ, and keep close to him, and so with great joy addressed himself to go to his next work.

Col. Francis Hacker was a man of few words, and had not the gift of oratory to deliver himself as others could, yet was very sweetly borne up under his sufferings, and had a very comfortable assurance that God had pardoned and accepted him in the blood of Christ; he had been a professor of religion many years in the Presbyterian way, and a great lover of Godly ministers; a man of just and honest conversation amongst men, and one that desired to walk blameless in the sight of God; his fellow-pri-

soner did say, he did believe that col. Hacker had an interest in Jesus Christ.

Col. Hacker declared to several of his own friends, a little before 'he suffered, that the greatest trouble he had upon his spirit was, That he had formerly borne too great a prejudice in his heart towards the good people of God that differed from him in judgment. And then broke forth into this admiration, O what am I, poor vile worm, that God should count me worthy to suffer with such precious souls as these are, against whom I have been formerly so much prejudiced!

And thus these two gracious persons having finished their course, and the time of their departure being at hand, were both brought forth out of prison. The sledge being ready for them, they took their leave of some friends that stood at the door, and col. Axtell desired them to be at the place of Execution; and both entering the sledge, they cast up their eyes towards that God to whom they were coming; then with a cheerful countenance, setting themselves down, they were drawn to Tyburn, the place of Execution, where a cart was set ready, into which they both ascended, their countenance not at all changed, though now the king of terrors stared them in the face; the ropes being then put about their necks, and burning fire kindled before their face; and being ready to receive that sentence which nature would have sunk under, if grace had not supported: First col. Axtell applies himself to the Sheriff in these following words:

Mr. Sheriff, I am now, as you see, come to the place of Execution, according to my sentence, I desire your leave that I may speak freely, and without interruption; first to this people, and then to God, for it is the last that I shall speak in this world, and I hope it will redound to your account.

Mr. Sheriff's reply. Sir, you know what the Court prohibited you to speak, and what was spoken at the bar of the Court was there decided, therefore it is needless to repeat it here. I hope you will keep to the present business that concerns you, and not go out into impertinencies; and because you have but a little time, spend it to your best advantage, and the good of the people, and then you shall not be interrupted; [or to the same effect].

Col. Axtell begins. I say, the very cause for which I have engaged is contained in this Book of God, [having the Bible in his hand.] both in the civil and religious rights of it, which I leave to you, [giving the book to Mr. Knowles].

You see a dead man living, and yet I hope I shall live to all eternity, through the mediation of Jesus Christ, the mediator of the covenant of free grace.

I must truly tell you, that before these late wars, it pleased the Lord to call me by his grace, through the work of the ministry; and afterwards keeping a day of humiliation in fasting and prayer, with Mr. Simeon Ash, Mr. Love, Mr. Woodcocke, and other ministers in Lau-

rence-lane, they did so clearly state the cause of the parliament, that I was fully convinced in my own conscience of the justness of the war, and thereupon engaged in the parliament-service, which (as I did and do believe) was the cause of the Lord; I ventured my life freely for it, and now die for it.

Then Mr. Sheriff said to this purpose, Sir, remember yourself.

Colonel Axtell proceeds; After the work of the Lord was done in England, my lot cast me in the service of Ireland, and I thank the Lord I was serviceable to the English nation in that country, and have discharged my duty fully, according to the trust committed to me there.

As for the fact for which I now suffer, it is for words, only for words, and but for words, and the sentence is already reversed in my own conscience, and it will be reversed by Jesus Christ by and by: I pray God from the very bottom of my soul, to forgive all that have had any hand in my death, both witnesses and jury, and the Court that passed sentence: for considering the doctrine of our Lord Jesus Christ, as he hath laid it down, Mat. v. 44. 'It hath been said of old time, love your neighbours, and hate your enemies; but I say unto you, love your enemies, and pray for them that hate and despitefully use you, that you may be the children of your Father which is in heaven.'

I desire, according to this doctrine, from the bottom of my heart, that God would give them true repentance, and not lay their sin to their charge, nor my blood, which by God's law and man's (I think) could not justly have been brought here to suffer: But I bless God I have some comfortable assurance that I shall be embraced in the arms of Christ, and have cause to hope that his spirit shall carry my soul into the Father's hands. And if the glory of this sunshine be so great (the Sun then shining bright) how much more is the glory of the Son of God, who is the Sun of Righteousness?

I think it convenient to give you some account of my faith. I believe all things written in the Old and New Testament, as the principles and doctrine of a believer's faith; I believe the blessed ordinances of Christ, that it is our duty to hear the word preached, to seek unto God in prayer, and to perform family duties, and to walk in the Communion of Saints; and for any own part, I am a member of a congregation, which I judge to be the way of Christ, (and were it for that only I were to die, I could witness to it) which is a company of men born again by his grace, that walk in the ways of Christ blameless and harmless. I believe Jesus Christ died for poor sinners, of whom I am chief, as the Apostle Paul saith, 'This is a faithful saying, and worthy of all acceptance, that Christ Jesus came into the world to save sinners, of whom I am chief.' And if the Apostle might say so, much more may I.

My friends and countrymen, I have reason to bewail my own unprofitable life, having been very unfruitful to the people of the Lord,



the Lord knows I have much fault upon my heart; were it not for the blood of Christ that cleanseth and washeth me, according to his promise, saying, 'I loved you, and washed away your sins in my own blood.' For there is no remission of sins without the blood of Christ. I desire you all to lothe and cast off sin, it were better to suffer than to sin; it is better to die than to sin; nothing could grieve our Saviour but sin, and therefore have a care of that: You and I must meet one day at the bar of Christ, and the Son of God shall be our judge, for God hath committed all judgment to the Son, 'that all men should honour the Son as they honour the Father.' This day is a resemblance of that day, therefore be serious; I beg as much grace to your immortal souls as I expect to enjoy by and by. I beseech you beg of God that he would save your souls, and omit no opportunity through the strength of the Lord to believe, and put your trust in the Lord Jesus Christ; be sure to labour after assurance of your interest in him, or else you will be of all men most miserable; for I of all men were most miserable, if I had not believed to see the goodness of the Lord in the Land of the Living.

Blessed be the Lord that brings me into this state, let the way or means be what it will; it is God's sovereignty, who made these creatures so, to dispose of them how he pleaseth, and God hath ordained this death for me from all eternity. The Lord Christ often prayed, 'Thy will be done;' this is the Lord's will. He hath numbered my days, and my times are in his hand. Many seek the Ruler's favour, but every one's judgment is from the Lord. When Pilate said unto Christ, 'Knowest thou not that I have power to crucify thee?' Christ answered him, 'Thou couldest have no power against me, except it were given thee from above.' Therefore I acknowledge the righteous hand of God; he is righteous, but I am sinful; 'Therefore will I bear God's indignation, because I have sinned against him.'

It is said of Jesus Christ, 'That for the joy set before him he endured the cross, and despised the shame, and is set down at the right hand of God,' where I hope to see him by and by in glory and majesty, and to see his angels and believers worshipping of him, and therefore I despise the shame. Our Saviour died upon the cross without sin, I am a sinful creature, a wretched sinner, and shall I expect better than he that was my master? He who was holy, and never had a sinful thought in all his life; and died not for himself, but for us, that we might live through his death; that through his poverty we might be made rich. And Christ having done this for his people, it should not be in their eyes thought a despicable thing that we should suffer for him, having been engaged in the work of God. But Christ must prevail in righteousness, and he will prevail.

Now, Mr. Sheriff, I thank you for your civility, and for this leave.

After this colonel Hacker spoke something privately to him, whereupon colonel Axtell said, Mr. Sheriff, must we both die together?

Mr. Sheriff answered, Yes.

Then colonel Hacker read a paper which he had in his hand, a copy whereof followeth:

"Friends and countrymen, all that have known me in my best estate, have not known me to be a man of oratory, and that God hath not given me the gift of utterance, as to others; therefore I have only this briefly to say unto you that are spectators: As the parliament stated the war, I did out of judgment and conscience join with them in the common cause, and have through grace been faithful to it according to my measure. And as for that which now I am condemned for, I do freely forgive both Judges, Jury, and Witnesses, and all others; and I thank the Lord, to whom I am now going, at whose tribunal I must render an account, I have nothing lies upon my conscience as guilt whereof I am now condemned, and do not doubt but to have the sentence reversed. I do now apply myself unto God by prayer, and do desire the hearty prayers of all that fear God, that I may have a sweet passage from this mortal life to that immortal life, which God hath prepared for all that are in Christ Jesus.

FRANCIS HACKER."

After the reading of this, he desired that col. Axtell would be both their mouths to God in prayer.

And then col. Axtell said, I desire all that fear the Lord to hear with patience, and to lift up their hearts to seek the Lord with me, that we may have his strength, and the presence of his spirit from this world to everlasting life.

*The Prayer followeth:*

Oh! blessed Lord, the God and Father of our Lord Jesus Christ, who art the great God of Heaven and earth; Heaven is thy throne, and the earth thy footstool; thou upholdest all things with and by the word of thy power. The issues of life and death are in thy hand, O God. Blessed Lord, we pray thee let us have communion with thyself, and the glory of thy face, let the shining rays of Christ shine continually upon our souls. Lord, let there be no interposition between the brightness of thy glory and our souls, till we come into the fulness of the possession of it. Blessed Lord, we desire to take shame before thee and this multitude, for all our iniquities and transgressions: we were born and came great sinners into the world; the root of bitterness was in us, that flowed from that bitter fountain Adam: but thou, O Lord, hast been pleased to send the second Adam, that, as by the sin of one man death entered into the world, so by the obedience and righteousness of one, Jesus Christ, many should be made righteous. Blessed Lord, thou knowest all our original guilt, all upon our hearts, and upon our consciences, all our personal defilements and transgressions: we pray thee, Lord, wash them all away in the blood of Jesus Christ. Lord, we have nothing of our own to rely upon, but a Christ; for all our goodness and righteousness is but as polluted rags, and monstrous clothes. Therefore, O Lord, thou

hast said, by the works of the law no man shall be justified, but by the righteousness of Christ Jesus. Therefore, O Lord, hold out the covenant of grace to poor believers, and make Jesus Christ the mediator of the covenant, to perform God's part to us, and our part towards God. Oh Lord, in thee are all our springs: thou art the fountain of all grace; let us have mercy and pardon from thee. Lord, it is by grace that any here are saved. Thou shouldest be a righteous God if thou shouldest not only suffer us to lie under the condemnation of man, but to exclude us from heaven and glory for ever.

But, Lord, if thou shouldest be strict to mark iniquity, who should stand in thy presence? But there is mercy with thee that thou mayest be feared. Lord, thou hast said, who is a God like unto thee? Pardoning iniquity, and passing by the transgressions of the remnant of thy people, for thy own name's sake. Lord, it is thy covenant, that thou wilt put thy spirit into our hearts, and write the law in our inward parts, and our sins and transgressions thou wilt remember no more. Blessed be the Lord for the Lord Jesus Christ; for had it not been for a Christ, we were undone for ever. Blessed be our Lord, that hath written our names in heaven, and given us a portion in Christ, in whom we have believed and trusted. We humbly beg of thee the pardon of all our personal and family guilt; the sins of our public employments, which thou knowest we have not willingly committed, though it may be through infirmity and temptation, and the sins of our nature. Lord, we humbly pray thee, let us see ourselves justified in the blood of our Lord Jesus, that we may say with the apostle, Who shall lay any thing to the charge of God's elect? It is God that justifyeth us, it is Christ that died; yea, rather that is risen again for our justification. He is risen that he might be our advocate, intercessor, and mediator. He is filled with all the fulness of the Godhead, to distribute to us according to our need. Thou hast promised by the apostle, that God shall supply all our wants according to the riches of his own grace. Lord, thou wilt have the passover eaten with sour herbs, and Lord we are contented: but, Lord, thou hast provided sweet wine for us; and hast thou not kept the best wine, and the best of thy divine comforts until now? Till now? To carry us over this bridge, and passage from earth to heaven? Sanctify this our passage; for it is best to have the cross with the crown; they go together, and are inseparable: therefore saith our Lord, They that suffer with me, shall also reign with me.

Dear Lord, we pray thee give us a full evidence, and let thy Holy Spirit witness to our souls that we are the children of God, and reconciled to thee in the covenant; and that we shall through thy Son be glorified with thee. Strengthen our faith, that we may lay hold upon a naked Christ, that by his blood we may be purged, washed and cleansed; and for our

justification, sanctification, and acceptance with the Father.

Glorious Lord, we desire to leave our requests with thee on the behalf of this poor people, as the last request we have to beg of thee on this side Heaven: If there be any here not belonging to Christ, and not friends to him, Lord convert them, and shew them their own undone and miserable estate, and give them the pardon of a dying Saviour, (thy poor servants would not part with a Christ for ten thousand lives.) Lord, make Christ precious to their immortal souls: Lord, convince them of the evil of their sins, and the evil of their own ways, and break them off from them, and cause them to close with Jesus Christ. Thou hast promised that those that come unto him, thou wilt not cast off. Remember all thy people, and help them to persevere in thy grace and love, and make them able to hold fast the truth till thou come; and to quit themselves like men, to stand fast in the faith.

Blessed Lord, we humbly pray thee to have mercy upon that great city, the place from whence we came. When thou resolvedst to destroy Sodom, thy servant Abraham expostulated with thee, and thou saidst, 'If there were but ten righteous thou wouldest save it.' But, Lord, there are many tens of righteous ones in that city. It hath been a place where thou hast been glorified, and where many godly ministers have been encouraged: O Lord, let it go well therefore with that great city, and let thy Gospel have free passage in the public worship of it. Bless the government and governors thereof, and make them instruments to thy glorious praise. We pray thee have respect to the chief magistrates that are come here by command to see execution done: Oh Lord, we beg mercy for their souls: Oh that Christ would evidence himself more to their souls, and that we might meet in heaven together, and be embraced in the arms of our Lord Jesus Christ. And him that shall be the executioner, and must now wash his hands in our blood, do thou wash his soul in the blood of Jesus Christ: O Lord, we pray thee that thou wouldest have pity upon his poor soul, and remember him in his low estate; and let him know what it is to be washed in the blood of Christ, that fountain set open for sin and for uncleanness.

Blessed Lord, help us thy poor creatures with strength, for we have no strength of our own. Thy word saith, that death is the king of terrors; but blessed be thy name, thou hast taken the sting out of it, and the poison from it; and therefore, as saith the Apostle, Oh death then, where is thy sting? Oh grave, where is thy victory? Thanks be to God, through Jesus Christ, that hath given us the victory. Thou hast said by the Apostle, We have the sentence of death in ourselves, and therefore should not trust in ourselves, but believe in Christ that raiseth the dead. Lord, we will not trust in our selves, but in the living God—Oh my God, that art the God of Abraham, and Isaac, and of Jacob, strengthen and support our poor

souls, Stephen when he was stoned to death, saw the heavens opened, and the glory of the Father and of his throne; shall we but see the face of Jesus Christ, bearing up our hearts under all, and we shall go through. Thou hast promised that thou wilt never, never, never leave us nor forsake us. Thou hast said, 'Who can separate us from the love of God in Christ? Jesus? Can life? can death? or what can separate a believer from Jesus Christ? Let thy angels come down: we are persuaded that the angels are ready to receive our souls, and to carry them into thy bosom, and into the company of Abraham, Isaac, and Jacob, and of the blessed Apostles and Martyrs and Witnesses of Jesus Christ, and just men made perfect in thy kingdom. Blessed Lord, thou art our support and comfort; support us with the cordials of thy love, O thou Father of mercies, and God of all consolations.'

Blessed Lord, before we make an end of praying, we beg one request for the chief magistrate of this nation, That thou wouldest give him a glorious Christ into his poor soul, and magnify thy grace towards him, that he may become a friend unto Christ, and a friend to the people of Christ; and reign in righteousness; and may be a terror to evil-doers, and a praise to them that do well; that he may cast away iniquity with his eyes, and rule for God, before whom he and all others must render an account in the day of judgment. Lord hear us for him. And blessed Lord do the like for all that had any uncharitableness towards us; we would have gone towards them, but we beg their souls might live in thy presence; make them to see their sins, and let them receive their pardon, that we might embrace one another through the grace of God, in Jesus Christ one day in heaven. Dear Father, we pray thee for them as we would beg for ourselves.

We now desire to resign up ourselves into thy bosom as it is thy command; thou hast said, 'Ye are bought with a price, not with silver or gold, but with the precious blood of Jesus Christ;' and we offer up our bodies and souls unto Christ, which is but a reasonable service, that thou shouldst have all when thou callest for them, our estates and lives themselves. The earth is the Lord's, and the fulness thereof, and we are all his works: It is God's sovereignty to command whatsoever he pleaseth. Blessed Lord, we desire with our Lord Jesus, when he offered up himself upon the cross, he said unto thee, 'O Father, into thy hands I commend my spirit; and with Stephen when he was put to death, Lord Jesus receive my spirit.'

So say we, Lord Jesus receive our spirits: pity us, love us, and accept us, in thy Son, upon whom we rest for life and salvation. Lord, let us know that death is a passage into glory; it is appointed for all men once to die, and afterwards to judgment. This is a decree and statute-law of heaven, That all must die; and this is some comfort in our death, that from this time forward, we shall sin no more, grieve

Christ no more, dishonour God no more, nor offend any else more; set thy love upon our souls, and let our prayers be dissolved into praises, where we may embrace thee, and thou embrace us.

We humbly intreat thee do more abundantly for us and all them we have prayed for, than we are able to ask or think, in the name, and for the sake, of our Lord Jesus, who is the intercessor with the Father, who hath promised that he will pray the Father for us; he is the mediator of the new covenant, betwixt God and us; our fullness, our strength, our comfort, and our support, our all: in his name we ask all our requests; to whom with thyself and thy holy spirit, we desire to give all honour, and glory, and praise, for evermore. Amen.

After he had ended his prayer, he gave the Sheriff thanks again for his civility; and then turning to colonel Hacker, they saluted and embraced each other in their arms, and said, The Lord sweeten our passage, and give us a happy meeting with himself in glory.

Then pulling his cap over his eyes, expecting, as is supposed, that the cart should be drawn away; with his hands lifted up, he uttered these words with a loud and audible voice, 'Lord Jesus, receive my spirit.' But the cart staying a little longer, he lift up his hands the second time, and with the like audible and loud voice, said, 'Into thy hands, O Father! I commend my spirit.' And yet in regard there was no man found to put forward the horse to draw away the cart, until the common hangman came down out of the cart himself to do it; the carman, as many witnesses affirm, saying, he would lose his cart and horse before he would have a hand in hanging such a man; by this means he had opportunity to lift up his hands, and utter the like words the third time also.

One thing more is very remarkable. that when colonel Axtell and colonel Hacker were taken out of the sledge into the cart, the spectators being in great numbers there, behaved themselves very civilly, only two persons among them, as soon as the ropes were put about their necks, cried out very earnestly, Hang them, hang them, rogues, traitors, murderers; hang man, draw away the cart: whereupon a man that stood by them desired them to be civil, and said, Gentlemen, this is not civil, for the sheriff knoweth what he hath to do; and thereupon they were silent, and gave attention to colonel Axtell's speech and prayer; but before he had done, those very persons were so affected, that they could not refrain from pouring out many tears upon the place, went aside to a place a little more retired to weep; and that man that before desired them to be civil, went after them and beheld them, to his great admiration, as himself hath narrated.

Some Particulars of the BEHAVIOUR, and of the EXECUTION of Colonel ADRIAN SCROOP, October 27, 1660, at Charing Cross.

After his condemnation, one of his children hanging upon him, and weeping over him, he said, Pence child, peace, be still, not a word; thou hast a blessed portion; who would be troubled to die? for can any one have greater honour, than to have his soul carried up to heaven, upon the wings of the prayers of so many saints?

When the jailor called him, and Mr. Scot, Mr. Jones, and Mr. Clement, to go to the dungeon, saying, gentlemen, you must go to the room where Mr. Harrison was. Says colonel Scroop, must we all go? He replied, Yes. At which, laying his hand on his breast, and elevating his eyes, with a serious countenance, said, Blessed be God that we are not parted.

As he sat at dinner he spoke to a minister that was with them, saying, I would speak it for the glory of God's free grace, and the comfort of you all, that my sins are all pardoned; not one unpardoned: and God hath loved me with an everlasting love; and in the strength of this, will I go to heaven.

Speaking to some friends that came to visit him, said, I desire all the people of God, to look at the Lord's hand in this dispensation, and own his sovereignty; speak well of him, whatever he doth; lie at his feet with your mouths in the dust; and live more in love and unity one with another.

A tall gentleman coming into the dungeon to see col. Scroop, the night before he died, said to him, Uncle, I am sorry to see you in this condition, and would desire you to repent of the fact, for which you are brought hither, and stand to the king's mercy; and more words to the same effect. Whereupon col. Scroop put forth his hand, and thrust him from him, using these words, Avoid Satan.

When the time approached for his execution, Mr. Scot and Mr. Clement were first carried away in the sleds, and the same sleds was afterwards to come and carry col. Scroop, and col. Jones: during that time, says col. Scroop, Well, brother Jones, do you spend your time as the Lord shall direct you, I intend to take a little sleep, for I slept not well the last night; and my countenance is not so fresh as I would have it. Thereupon he laid him down, and slept so soundly, that he snored very loud, and so continued until the sled came for him: whereupon, being awakened, he riseth up; and a friend taking him in his arms asked him how he did? he answers, Very well, I thank God, never better in all my life.

And now, saith he, will I wash mine hands in innocency, so will I compass thine altar, O Lord: and so with great cheerfulness went to execution.

Colonel Adrian Scroop, and colonel John Jones (two comely ancient gentlemen) were both drawn upon that sled which carried Mr. Scot; and being come to Charing-cross, the place of execution, col. Scroop was first brought up to the ladder, where he spake as followeth:

*Col. Scroop's Speech at Execution, October 17, 1660.*

You see an object here, that hath been in a better place; but howsoever the Lord Jesus Christ hath sent me to this place, that in this place I should die. I have no animosity nor malice against any man, nor ever had I; neither have I any evil will to those that brought me hither, nor to the jury that found me guilty; nor judges that passed sentence; nor to him through whose means I was brought here to suffer. I say, once more, the Lord forgive him, I shall not name him; for I come not hither to reflect upon any man's person.

I will not tell you what my breeding hath been, because it is not good for any man (especially at such a time as this) to boast of his lineage nor breeding, but this I shall say, that I was born and bred a gentleman.

As for my carriage, it may be some that looks upon me here, knows what it hath been: Howsoever the Lord knows all, and the Lord God is Judge of all, and he will judge; I shall submit myself to his judgment, which is a righteous judgment. The judgment of men may go wrong, but God's judgment is right, I shall submit to his way. The Lord is the rock of ages, and my support under this great weight that is now upon me: I look up to him alone, the Lord Jesus Christ is my Saviour and my Redeemer; I am going into his arms, blessed be his name, I follow him, he is gone before me the same way: Therefore it is no reproach or shame to follow the Lord Jesus Christ, to die in his cause; for that is it which I judge I am now going to do.

That which I do desire of you (here are a great many spectators both on the right hand and on the left) is, That this day may represent to you, the general day of the judgment of Christ, where you must appear, and there every man must receive according to their works: And at that time it will be known; I say, at that time it will be known and seen, whose works are righteous, and whose are not; Therefore I would wish you, and desire you, to judge charitably of me.

*Some more Passages of Col. Scroop.*

Colonel Scroop, when a friend asked him at parting, the same day, how he did, answered him, Better and better, I thank God, every moment, my life doubles upon me, and multiplies.

He also heard him say, when mention was made, that there was some endeavours for his pardon, That only would prove a snare to him, but he was fully satisfied what to do, and should not to save his life, do any thing to prejudice his conscience.

He also heard him when one was discoursing to him the happiness of heaven, and telling him it consisted in three things, viz. A perfect communion with God; A perfect conformity to God; And a perfect enjoyment of God. He made this reply, Those three things

you mention are but one, we are entering into it, and can tell. And that friend asking him further about it, he said, That God was but one pure act, and in whom there was no succession nor distinction of acts; and that souls led forth in his spirit, were in a manner made like to him: for their enjoying was their conformity and communion, and one was all: In which he seemed to be swallowed up, and even then got so far into heaven, that all seemed to be but one act with him.

Some friends being present, heard both him and col. Jones say; You can say, God is better than all the world, and say it truly; but you cannot say it with so much feeling and experience, as we now can: we find he is so indeed.

*Col. Scroop having given a brief account of himself to the people, his last work was, to give up himself to God in prayer, as followeth:*

"O Lord, thou art my Father, a present help in trouble; Thou art my Father, I believe in thee: I come unto thee, Lord Jesus, that went unto thy Father, and my Father, thy God and my God; and this is that which doth support my spirit, and enable

me to undergo this death with cheerfulness and readiness. Lord, thou knowest my heart and affections, and my desires, Oh deal not with me according to my sins, I am a miserable wretched sinner; If thou enter into judgment, who is able to stand before thee? but there is forgiveness with thee, that thou mayst be feared. O Lord let it be known and seen, that there hath not been any heart in me, to do anything with malice or revenge, or that might shew any revenge: if there be any revenge on the other side, the Lord lay it not to their charge. The Lord bless those in authority, the Lord bless his majesty that he may reign prosperously, and that he may receive a blessing from the hand of the Lord. O Lord, thou seest my failings, my infirmities and weaknesses, O Lord, I beseech thee that thou wouldst hear with me, thou art a tender-hearted Father; Thou art my strength: When my heart and my strength faileth, then thou art the strength of my heart, and my portion for ever, O Lord be with me in this hour of temptation, and carry me through it; for thou art my God and my Father, into whose hands I commend my spirit, for thou hast redeemed me."

After which he was turned off.

## The Trials, Behaviour, and Dying Speeches of Colonel OKEY, Col. BARKSTEAD, and MILES CORBET, esq. April, 1662.\* [Published by their Friends.]

COLONEL OKEY, colonel Barkstead, and Miles Corbet, esquire, being involved in one and the same danger, did, since the king's coming in, ship themselves for Holland, after many great

difficulties and hazards. Two of them, viz. col. Barkstead, and col. Okey, after a short stay in Holland, travelled up higher into the country, and at length settled themselves at a town call-

\* Ludlow's account is as follows:

"Colonel John Barkstead and colonel Okey, with colonel Walton and colonel Dixwel, who had been commissioners in the high court of justice at the trial of the late king, having made their escape from England into Germany, were received into protection at Hanau, and made burgeses of the town. Of these, colonel Barkstead and colonel Okey took a journey to Holland, to meet some relations who were contented to banish themselves with them, and to conduct them to the place which they had chosen for their residence. But one Mr. George Downing, who was agent for the king in Holland, and had formerly been a preacher, and chaplain to colonel Okey's regiment, having received information that such persons were in that country, obtained an order from the States-General for their seizure; by virtue of which they were taken, together with Mr. Miles Corbet, one of the king's judges also, sent into England in a ship of war, and committed prisoners to the Tower. Two things seemed especially remarkable in this action; the treachery of Downing, after he had given assurance to a person sent to him by colonel Okey to that end, that he had no orders to

look after him; but chiefly the barbarous part acted by the States in this conjuncture; who, though they had themselves shaken off the yoke of tyranny, and to that time had made it a fundamental maxim, to receive and protect all those who should come among them; yet contrary to the principles of their government, and the interest of their commonwealth, to say nothing of the laws of God, nature and nations, without any previous engagement to the court of England, contributed as much as in them lay to the destruction of these gentlemen. But a treaty was to be made with England, and their trade secured at any rate, though the foundations should be laid in blood.

"Mr. Miles Corbet was a gentleman of an ancient family in the county of Norfolk. He had applied himself with diligence to the study of the laws of England in the society of Lincoln's-inn; and, for the space of thirty-seven years, had been chosen to serve his country in the several parliaments that were called. Being appointed one of the high court of justice for the trial of the late king, he appeared not among the judges, by reason of some scruples he had entertained, till the day that sentence was pronounced. But, upon more mature de-

ed Hana, in High Germany, where by their good carriage and obliging conversation, they obtained the favour and privilege to be enrolled free burghers of the said town. They continued there for many months, in good esteem with the inhabitants, and with great endearment of affections to each other. Some urgent occasions inviting col. Barkstead to return for Holland, col. Okey, out of mere kindness and respect to his friend, resolves to accompany him, and so both of them took their first conveniency for Holland; having before received encouragement to undertake the voyage, from a friend, whom they had employed to solicit the States General, that they might abide for a short time within their jurisdiction, unmolested, to which, as their friend informed them, they did most freely and willingly condescend. Another also was more particularly engaged by col. Okey, to acquaint sir George Downing (the king's resident now in Holland,) with their intentions of coming speedily into that country in case they might, for a few days, remain there in safety,

liberation, finding them to be of no weight, he durst no longer absent himself; coming early on that day into the court, that he might give a public testimony of his satisfaction and concurrence with their proceedings. He was afterwards by the parliament made one of their commissioners for the civil government of Ireland; in which employment he manifested such integrity, that though he was continued for many years in that station, yet he impaired his own estate for the public service, whilst he was the greatest husband of the treasure of the commonwealth. The day before his death, he assured his friends, that he was so thoroughly convinced of the justice and necessity of that action for which he was to die, that if the things had been yet entire, and to do, he could not refuse to act as he had done, without affronting his reason, and opposing himself to the dictates of his conscience; adding, that the immoralities, lewdness, and corruptions of all sorts, which had been introduced and encouraged since the late revolution, were no inconsiderable justification of those proceedings.

“Colonel John Barkstead was a citizen and goldsmith of London, who, being sensible of the invasions that had been made upon the liberties of the nation, took arms among the first for their defence, in the quality of captain to a foot company in the regiment of colonel Venn. He had not been long in this employment, before his merit advanced him to the degree of a major; in which station he was made governor of Reading; and afterwards being preferred to the command of a regiment, he was constituted by the parliament, in consideration of his services, Lieutenant of the Tower of London. When he was brought to confirm with the testimony of his blood that cause for which he had fought, he performed that part with cheerfulness and courage, no way derogating from the character of a soldier and a true English-

and that he had no order from the king his master to seize them; Sir George did assure that gentleman, that he had no order from the king to apprehend or molest them, but that they might be as free and safe there as himself. Upon this last encouragement they did very much depend, col. Okey especially being confident that sir George Downing had a particular kindness for him, who gave him his first bread in England. This generous and plain-hearted colonel (who took a measure of all men by himself,) did, without the least hesitation, repose a great deal of trust and confidence in one whom he had been instrumental to raise from the dust. They had not been long in Holland before their occasions called them to Delft, whereof the forementioned knight had timely notice by one of his spies employed for that purpose, and having in readiness a warrant from the States General for the seizing of them, the knight, and his ruffianly crew, without the least sense of humanity or honour, having certain knowledge of their arrival at Delft, did, the

“Col. — Okey was also a citizen of London, and one of those who appeared early in the service of the parliament. He had been first a captain of foot, then a captain of horse, and afterwards major in the regiment of sir Arthur Haslerig. In the year 1645, at the time when the army was new modelled, he was made colonel of a regiment of dragoons, which was afterwards converted into a regiment of horse. In these employments he distinguished himself by his courage, conduct, and fidelity; and, during the usurpation of Oliver Cromwell, was dismissed from his command in the army, on account of his affection to the commonwealth. He was chosen by the county of Bedford to represent and serve them in the convention that was called by Richard; and, after the restitution of the great parliament, they restored him to his command in the army. Being ready to suffer for that cause which he had strenuously defended, he said in the presence of many witnesses, that if he had as many lives as he had hairs on his head, he would willingly hazard them all on the same account. The sentence against these three gentlemen having been executed on the 19th of April 1662, the king bestowed the body of colonel Okey upon his wife, to dispose as she thought fit. Upon which she ordered him to be interred at Stepney, where his first wife lay in a vault that he had purchased for himself and family. But the report of this funeral being spread among the people, several thousands of them assembled themselves in and about Newgate market, where the body lay, resolving to attend it to the grave. And though they behaved themselves with decency and modesty; yet the king, upon notice of this appearance, was so alarmed, that he revoked his grant to the colonel's wife, dispatched orders to the sheriff to disperse the company, and commanded the body to be interred in the Tower.” 3 Ludlow, 82.

very same night, proceed upon their design, and took them at their lodging, together with Mr. Corbet, who, upon notice had that they were in town, went only to give them a visit, and it being late, was even ready to take his leave of them. When they were all three thus seized, immediately they were hurried to prison, and by the procurement of sir George Downing, were most barbarously used, having shackles and fetters put upon them, and so cast into a nasty, moist, and dark dungeon, having nothing else but the damp earth to repose upon, and there continued all night, till two of the clock the next day, in a very sad condition; but afterwards, being treated a little more like men, some of the States came to them into the prison, bringing one of their chief ministers with them, and between examining of them, and discoursing with them concerning the fact for which they were seized, and the cause in which they were formerly engaged in England, where-in col. Barkstead especially gave them such satisfaction, that all of them, and particularly the minister, when they took their leaves of them, seemed to have a better opinion both of their persons and their cause, than they had before; and did withal give them assurance, that they should not be delivered up, to be sent for England, until they had had a more public hearing of what they could say in their own defence. But by the extreme officiousness of sir George Downing, and his continued solicitations, accompanied (as is reported) with strange menaces, these persons were soon after, (not only contrary to the particular engagements of the lords before-mentioned, but also against the very laws of nations, and of all human society and commerce, yea, against their own former practice, in the case of Ravillac, who murdered the king of France,) by order from the States General, at two of the clock in the morning, taken out of prison, and being manacled with wrist irons, chains, and locks, were thrust into a vessel lying at Delft, and from thence conveyed into one of the king of England's frigates, provided for the purpose, and so in a few days were brought for England. When they arrived at the Tower of London, they were forthwith disposed of, by order of the Lieutenant, to their several prison lodgings, and there continued until the 16th of April, 1662, upon which day they were carried up by water to the King's-Bench bar, to receive judgment, having been already, by act of parliament, attainted of High Treason, for compassing the death of the late king Charles the First. After a very short dispute, whether the prisoners at the bar were the persons named in the fore-mentioned act of attainder, yea or no? Witnesses being produced, who made full proof in the affirmative, and the prisoners themselves confessing it, the Jury, without going from the bar, gave in their verdict, that they were the persons named in the said act, whereupon Judgment was given against them accordingly. After Sentence was given, they were remanded back to the Tower.

#### *Colonel Barkstead's Behaviour.*

The morning of his Execution being far spent in discoursing with his friends, the sledge, about eight o'clock, came into the Tower, which making a great noise upon the stones, he ran to the window with a smiling countenance to view them, and said, "Oh! our chariots are now come! A little while after the sledge came, the gentleman porter, or some other officer in the Tower, came to acquaint him with it, desiring him to prepare for his departure: to which he rejoicingly answered, That blessed be God, it was not then to do; and so, with much cheerfulness, he committed his wife into the hands of the Lord God Almighty, resting upon his promise, That he will be a father to the fatherless, and a husband to the widow. A little before his departure, he desired his wife to button on his cloak, which accordingly she did, and presently the gentleman-jailor, and a file of soldiers came, by the Lieutenant's order, and received him; at which time he parted with his wife and relations, as himself professed, with as much joy as ever he received them. Now being brought by the jailor to the Lieutenant's door, that being the place appointed for the sledge to receive them; and although it was the place and house in which he lived in plenty and honour, yet he had so much estranged himself unto it, that he did not so much as cast his eye upon it; and no wonder, if his treasure were in heaven, that his heart was there also. He was appointed the first that should enter the sledge, and so to be drawn the foremost of the three through the city. Having thus entered the sledge, he sat down, and looking about him with a cheerful countenance, and speaking comfortable words to such friends as were near him, after a-while, the sledges were ordered to be drawn away, which accordingly was performed; and coming down the Church-Hill, opposite to his prison, (alias his palace), his wife, with some other friends, standing at the window, took her handkerchief out of her pocket, and shook it at him, which he perceiving, took off his hat, and several times shaking it over his head, cried out with an astonishing cheerfulness, To heaven, to heaven, to heaven, my love, and leave you in the storm! Thus passing along, he came to the Tower-Gate, where some reviled him in words and carriages, not only his enemies, but his former intimate friends, which he rather smiled than was troubled at. Near Holborn there came a young woman to him, being very earnest to speak to him, which the officers permitted; all that she told him she had to say to him was this, That whatsoever he did, she begged of him to go on cheerfully in so glorious a cause. Several spake to him in the same manner: And though he met with some revilers in the way, yet the number of his friends, and of such as blessed him, and the rest in the name of the Lord, far exceeded them. As he passed along, several times, a friend that accompanied him, asked him how

he did? Who told him, He was never better in all his life, and that he grew stronger and stronger every moment. And going up Holborn, being in discourse with the same friend, he, with a smiling countenance, told him, That he evidently saw Jesus Christ coming down the hill to receive and embrace him; and that this hour's difficulty, that he was now to go through, was not to be mentioned with that glory he was to enjoy. When he came near the place of Execution, the multitude of people increasing, they could not bring the sledge near the gallows, so the Sheriff ordered that he should be brought on foot, which accordingly was performed; and a cart standing ready under the gallows, he cheerfully got into it; before which, some of his friends took their leave of him, he leaving this word of counsel with them, To trust in that God, that hath promised never to leave nor forsake those that trust in him.

Being entered the cart, the Executioner tied his hands with black ribbons, taking off his perriwig, and putting on his cap. The Sheriff told him, that he would permit him to say any thing between God and himself, but nothing in justification of the act: but he refused to say any thing 'till col. Okey came, which was immediately after.

Several reviled him at the place of Execution; amongst the rest, the lord ———, bidding him (in a scoffing way) Good-buoy, Barkstead, Good-buoy! To which, with a smile, he returned this answer, Sir, you are no gentleman, to triumph over a dying man.

Another thing observable was, that a courtier, by way of derision, told him, O Barkstead! you have got the comforter! (meaning a little strong-water bottle that he had in his hand) To which he replied, That blessed be God, he had a better comforter than that, or else he should not be able to stand there so cheerfully as he did.

To conclude, all his carriages and actions were exceeding cheerful, going through those difficulties he met with, with an undaunted resolution, to the admiration and astonishment of his enemies, and the great rejoicing of his friends, who had before earnestly besought the Lord to vouchsafe his comforting and assisting presence to him.

#### *Colonel John Okey's Behaviour.*

On Wednesday the 16th of April, 1662, being the day that col. Barkstead, col. Okey, and Mr. Corbet had sentence passed upon them at the King's-Bench bar, after which a friend went to visit col. Okey, and found him in a sweet and blessed frame of spirit, and very cheerful, not in the least under any discouragement, but acquainted the said friend, that they had been up at Westminster, and that sentence was given against them; and declared he was not in the least disquieted at it, but thankfully owned the Providence of God, in bringing them from the place where they were beyond sea, to their present condition; wherein he professed

himself to be much satisfied, and declared, he had rather lay down his life here, than to have been buried in another nation; and expressed further, That for what he was charged withal and condemned, he had not the least trouble upon his spirit. He also told this friend, That he desired to bless God for the prayers of the Lord's people, for he found the benefit and advantage of them in this time of his trial. And with much cheerfulness of spirit, afterwards he did bless the Lord for his goodness to him, declaring he had got more benefit and advantage in the time of these his troubles, than in many years before; and one day especially, Since his coming into the Tower, he said, He was reading some verses in the xvth chapter of John, and the Lord did so set home upon his spirit, ver. 26, 27, especially that word, "The Father himself loveth you" that he was so much refreshed in his soul, that for an hour together he was, as it were, ravished with the joy of the Lord; the sight of which was much comfort to his dear wife, and did much refresh and cheer her spirit.

And upon Friday, the day before his suffering, several friends went unto him about one o'clock, and were with him some hours; he several times spake to them, saying, Well, friends, I shall now get to heaven before you, and shall go out of a sinful, evil world, into that place where I shall sin no more, nor sorrow any more; I bless the Lord, he is good to me in all his dispensations, and I could not have been without any of these afflictions. Then he mentioned divers choice places of Scripture, as 2 Cor. iv. 8, 9, and the 17th verse, explaining the words to sweet advantage: As for afflictions, said he, they are but slight and momentary, and that they work to glory, yea, an exceeding, yea, a far more exceeding and eternal weight of glory: And much strengthening himself with the promises of God, Isaiah xlii. 1, 2, upon which Scripture he did thus descant: Though Jacob was but a worm, and so trodden upon by every one, yet the Lord would be with him, and so with all his saints and people in their sufferings. He insisted also upon that Scripture, Heb. xii. 5, 6, together with many others, which were proper to his condition, and the Lord was pleased to make every one of them a strengthening cordial to him.

The day of execution, several friends went to col. Okey, by six of the clock in the morning, where they found him ready dressed, and with a sweet, cheerful spirit bid them welcome. They asked how he did; he said, never better in his life, and had found the benefit of prayers, and it had been a sweet night unto him, being sweetly refreshed, which also did much appear by his cheerful and fresh countenance; for it was observed, that he never looked better in all his days. He declared he had much quietness in his spirit; and said, as for the loss of his estate, it did not in the least trouble him: Then a friend hinted to him, the parting with his wife and relations; he answered, she had been a very tender wife to him, and had



expressed her abundant love and tenderness in this his distress ; but he was not in the least troubled at their parting, being assured the Lord would be better to her than he could be ; and also said, that though his wife had lost much since she knew him, as to-outwards, yet she had gained much, as to the better concerns, (for so his wife had declared unto him) which doubtless, well considered, will out-weigh all other losses. Some of these friends spent some time in prayer with him ; also the colonel himself went to prayer, and the Lord appeared very much in carrying forth his spirit to own his hand, and to see his goodness in all his dispensations, and to implore further assistance : And between the times of prayer, they had much sweet conference with him, in all which he manifested a very gracious and holy frame of spirit, and often declared, with great cheerfulness, that he was ready to be offered up. He was heard often to ask, whether his chariot was yet come, or no ? And some friends told him, Well, now the time draws nigh ; who answered, I am ready, I am ready. Then came the order for his going to the sledge ; upon which he went with all cheerfulness, and so went forward with undaunted courage, to meet death in the face, like a Christian soldier, indeed ; who, through the Lord's assistance, presently obtained more than a conquest over all his enemies.

As he was in the sledge, and drew near to the place of execution, a friend came to him, and said, Sir, I have a great desire to know how it is with you, and how the Lord is pleased to manifest himself unto you, in the condition you are now in. The colonel replied, friend, I thank you, I bless the Lord I have great cause to praise and magnify his great and glorious name, for his unspeakable goodness towards me, especially in this present dispensation ; for I can truly say, and that by experience, that the goodness of the Lord endures for ever : and praised be God for this present trial ! The same friend further replied, and said, I pray, sir, are you not at all dejected in your spirits ? Are you not cast down in your mind ? Have you not hard thoughts of God for this his strange providence towards you ? The colonel replied, friend, I shall endeavour to satisfy you as well as I can in this matter ; and I let you know, that I have not the least trouble upon my heart, nor the least burden upon my spirit, upon the account of my suffering ; neither have I any hard thoughts of God, but, on the contrary, can speak to the praise of his grace, that his goodness hath carried me forth above the fear of all these things. And, my friend, let me tell you further, that I have had more experience of God, and more acquaintance with God, within these three or four days, than ever I had in all my life ; and at this present, I am so far from being dejected, or cast down in my spirits, as that I am so much elevated and lifted up in my soul that I am not able to tell you how it is with me.

And when he was ready to rise out of the

sledge, another friend came to him, and asked him how he did ? To whom he answered, I bless the Lord, I am very well, and do no more value what I am now going about, than this straw : (taking a piece of straw in his hand.) I have, says he, made many a charge in my time, but now I have but one charge more to make, and then I shall be at rest.

*Mr. Corbet's Account of the Proceedings against him at Westminster.*

Thursday, April 17, some of his near relations and friends came to visit him, and having heard some malicious reports to his prejudice, as that he had denied his name, and not owned himself to be the person that was mentioned in the act, when he was at Westminster, at the King's Bench bar ; earnestly desired him to let them know the truth of things from his own mouth : To which he readily answered, that he was much misunderstood, and wrongfully represented, if any said so of him : and moreover said that, he blessed God, he was neither ashamed of his name, nor of his cause, nor of his master, and hoped never should ; and then related as followeth.

That his brethren, col. Barkstead, col. Okey, and himself, being brought before their judges, were there called all by their names, to which they made answer, and, as they were bid, held up their hands. Then the question being put, what they had to say for themselves concerning the fact which they stood there arraigned for, and which they were charged with in the act of parliament, at that time read before them ? Mr. Corbet answered, He did not take himself to be the person named in the said act, for that he did never maliciously, wickedly, and traitorously imagine, contrive, or endeavour to murder the late king, as was there charged upon him in the said act, and therefore desired them to prove it. What ! (said some on the bench) will you deny your names now ? Did you not answer, to, and hold up your hands at those names ? To which col. Okey made answer (not understanding Mr. Corbet's drift, which was to have a proof made, that they were guilty, in manner and form as the act expresseth it), he would never deny his name for the matter ; no more will I, saith Mr. Corbet ; neither do I ; but may there not be more men of my name, saith Mr. Corbet, that perhaps may have been guilty of malice against the king ? though for my own part I never was. Then col. Okey began to perceive his mistake, and col. Barkstead also ; who being thus satisfied, Mr. Corbet proceeded and told the judge, it was true, they were called by their right names, and did accordingly own them ; yet, saith he, it doth not *judicially* appear to this Court, that we are the persons meant in the act (putting an emphasis on the word '*judicially*'). No, saith one, the parliament hath adjudged it, and you are the man ; yet however, said some, let a jury be empannelled : and then the Attorney-General saying, that he was ready for a trial, a

jury was called, against which no exceptions being made, evidences were taken, and they found guilty.\* The judge then asked again, what they had now to say, why Sentence should not pass? Mr. Corbet replied, he humbly conceived the proceedings of the Court were not regular, nor agreeable to former precedents; for according to law, there ought first to be an Indictment, an Information, and Scire Facias, (as was in the case of sir Walter Raleigh) all which were pre-requisite to an issue in law, as their lordships well knew; so that here was a conclusion without premises: yet if it should please the judges to over-rule it, he was contented (carrying himself with much reverence

\* *The King v. Okey, Barkstead and Corbet.*

"They having been attainted by act of parliament, for the murder of king Charles the first, being three of his Judges, which sate in the High-Court of Justice, as they called it, and having escaped, and being retaken and brought to the bar, and demanded whether they were the same persons in the Act mentioned? They said, they were of the same names, but there might be divers persons of the same names: but they (further) said, that the Court ought not to proceed against them, without having a Record of their Attainders in Court, as was done in sir Walter Raleigh's Case, where the Indictment, though long before was (made) a Record of this Court, and produced; and thereupon the Record of the Act of their Attainder being removed by a Certiorari, into Chancery, and thence sent hither by a Mittimus, was read unto them; whereupon they pleaded, that they were not the same persons; and issue was taken thereon, and a Jury returned immediately to try it, which was done, and they were not permitted to challenge peremptorily; for they were not now to be tried for the treasons, but (only) of the identity of persons, and the Jury found them the same persons; and thereupon Sentence of Execution was immediately given, and three or four days afterward they were executed at Tyburn." *Levin's Reports*, vol. 1, p. 61.

*Keling's Reports*, p. 13. "Memorandum, that in Easter Term, 14 Car. 2. John Barkstead, John Okey, and Miles Corbet, three of those persons who presumed to judge the late king to death, were apprehended, they then being outlawed upon the former Indictment; and they were brought to the King's-Bench bar, and demanded severally, what they could say, why Execution should not be awarded against them (after the Indictment was first read to them)? And they pleaded, they were not the same persons; and thereupon, the same day, a Jury was presently returned, the Court sitting, and they found they were the same persons, and so Execution awarded, which was after done accordingly."

Note, So is the Report in the Manuscript, but the Record is of an Attainder by Act of Parliament; but there might be an Outlawry also,

and respect unto the Court). To which either the Attorney-General, or some other, replied, That Mr. Corbet said truth, as to ordinary proceedings, but here it was extraordinary, viz. by act of parliament in a Bill of Attainder; and then cited a book case of one Stafford, who was thus proceeded against, sentenced and executed in Henry the 7th's time. To which Mr. Corbet replied again, he had nothing to say to that, but 'what the authority of the nation had made law, he must submit to; and did acknowledge, as things stood, they did proceed according to the rules given them, and in that respect did what was just, according to the present law. But did you not confess the fact, saith one, by your own light? It being a known maxim, 'Qui fugam facit fatetur facinus.' To which col. Barkstead answered, that he, for his part, fled for fear of an arrest, threatened against him for 20,000*l.* for pretended false imprisonment. Mr. Corbet said, that he, for his part, did not fly for twelve years together after the fact done, and that any body who had a mind to it, might easily have seized him, it being well known where he was all that time; and when he did fly, it was not prohibited, nor any way unlawful, as conceived, for himself, or others, so to do; and now that he was returned again, he knew not that he was an out-lawed person, and, if occasion had been, could have been ready to have traversed any suit commenced against him. And as for what he had done in this business, that there he stood accused for, he said, he was engaged in it by the then supreme public authority of the nation, the lawfulness of which authority, he said, at that time, was every where acknowledged and reputed so to be; and had he not this to plead for himself, he should then have thought, that what was done by himself and others, had been very wicked and abominable: but the authority being, since that time, changed, and new laws made, by which, both the fact, and the power itself too, by virtue of which it was done, are both said to have been invalid, (though the law-makers, at that time, did not think so,) he had nothing further to add.

This is a true relation of this matter, as near as possibly can be, taken from his own mouth; if any mistake be in a word ignorantly related, or sentence misplaced, the reader is desired to pardon it.

This Mr. Corbet having been heretofore bred at Lincoln's-Inn, and known to be a good lawyer, and late Lord Chief Baron in Ireland, and also much acquainted, by long experience, with affairs of state, as having been a member in all the parliaments that have sat since the beginning of the late king's reign; and being also further known to have been an ancient and long-experienced, sound Christian, a man of a very tender conscience, and of an holy life and conversation, and that as well in his greatest prosperity, as in his adversity; it was the earnest desire of many, even of all parties that knew him, fully and clearly to understand

from his own mouth (especially now in this time of his affliction) what inward peace, quiet, and satisfaction he had in his own conscience, touching that act which he was condemned, and very shortly to die for, and which passed under so many dreadful names, of the most horrid, heinous, wicked, and unwarrantable act that was ever done, of the vilest murder, most execrable regicide, detestable and bloody crime, that men ever were guilty of, and like unto which none hath been said to have been ever perpetrated in this world before, except the putting of Christ himself to death.

His answer to this question was the more desired, because he being taken for so good a Christian, and so able and experienced a lawyer and statesman, as is before described, his opinion therein would be the more considerable, and his words be of the greater weight, which side soever they should fall, whether to the justification or the condemnation of the fact.

Now to this question (which he said he had long before examined thoroughly, and very well digested), he said he would make this true, faithful and ingenuous answer, and hoped he should stand to it, and maintain it to his last breath. And although he did find (he said) some near relations were not of his mind in it, yet for his own part he remained steady and unmoveable therein; and before several witnesses (which he had now left surviving) that heard him, declared as followeth:

1. He said, when he was named and appointed by the parliament to be one of the judges, he was not present in the house, nor did he at any time give his own personal consent thereto, or approbation of it, but rather fully resolved never to engage in that business.

2. When the bill came into the house, he spake against it, and gave his reasons; nor could he be drawn by any arguments to appear in the High Court of Justice, or allow of their proceedings.

Yet, 3. The state of affairs being as then they were, and the consequence on both sides (either of owning, or not owning and joining in that act), being with much prayer and consideration well weighed by him, he at last came to a fixed settlement in his mind about these ensuing particulars.

1. That the supreme authority of the nation, as then it stood (notwithstanding the alterations made in it) being generally accepted and submitted to at home, and owned by foreign states abroad, without any question made it from the body and bulk of the people (though here and there some scrupled it whose interest lay contrary), was lawful and sufficient to warrant all that was or should be done in reference to the late king.

2. That the solemn appeals made to God on both sides, both by the king on his side, and by the parliament on their side, all the time of the war, and answered so distinctly and fully from heaven, on behalf of the parliament (as all men then seemed to judge) did further confirm

him in the warrantableness of their undertakings, and righteousness of the whole cause.

3. That the foresight of such miserable changes, as by return of the hierarchy, and the concomitants and effects thereof (which he saw was aimed at, and did believe was intended by the late king, at least after some time) did greatly induce him to look into, and fully inform himself about the matter of the charge against the said late king.

4. That upon mature and long debates of parliament, and such as were authorized to search into the charge aforesaid, he found things fully proved; and moreover said, That the matters objected were of a very unusual and high nature; but that which principally swayed him to do what he did, was the blood of Ireland, and the levying war against the parliament, who were thereupon forced for their own defence and the safety of the people (by whom they were trusted, and whom they did represent), to take up arms, and so against their wills to maintain a most costly, dangerous, and unnatural war.

5. That though he was now fully satisfied in his own mind of the lawfulness of the fact, as well as of the power by which it was done, and that it was his duty no longer to stand out, but to join with his brethren as an actor in it, or else he might become guilty of unfaithfulness to the cause of God and his country; yet such was his base and timorous spirit, that he kept back and would not appear in it; the rather, because he was much set upon by his nephew, Sir Thomas Corbet (who then lived in the house with him) not to meddle at all, or have any hand in it. Now this Sir Thomas Corbet having a very considerable estate, to which himself was next heir, and which (in case he should go cross to his mind in this business) he had power (by cutting off the entail) to give away from him and his children, he was loath to displease: for he saw apparently which way his said nephew was bent. Yet,

6. Notwithstanding this, conscience wrought much with him, and would not suffer him (he said) to be quiet night nor day; for while on one hand, these carnal fears and disturbed thoughts pulled him from his duty (so he called it), yet, on the other hand, it pleased God more strongly to draw him to it, by often bringing and setting home upon his heart that scripture in Rev. xxi. 8. 'The fearful and unbelieving—shall have their part in the lake that burneth with fire and brimstone.' This text did so work and work in his mind, and so powerfully prevail with him, that though he had deferred to appear at the High Court of Justice till the very last day of the trial, yet then he durst stay no longer, but made haste to come in and sit among them, come what would of it in this world, lest the aforesaid punishment of the fearful should hereafter for ever befall him. And what he now did (he said) he did it with a free and resolved mind, and he blessed God that had conquered his cowardly spirit, and enabled him at last (though late) to come in

and do his part, and in some measure to prove himself faithful and obedient to God's as well as the nation's call herein. And further said, that upon the grounds before alledged, if all that hath been done were to be acted over again, he would do as he had done, and would not abate an inch of it; which words he spake with great soberness and settledness of mind but the very day before his execution.

Lastly, As to the whole business, he said he could and did appeal to God, the righteous Judge of all things, that what he did (as far as he could discern himself) was not out of any ill spirit towards the late king's person, nor out of any the least malice or disaffection to him, nor yet out of any unworthy end or design of his own; for as to the said king's lands or goods, or other public title, he never desired nor endeavoured to get any of them, but always by good providence kept himself free, that neither himself, nor any of his might grow rich, or make the least advantage that way. And as for that necessary and public act of justice (as he called it), he did never repent at all that he had a hand in it, nor, after all the searchings of heart about it, did see cause so to do, when at any time he had the most serious and calm reflections upon it; though he did confess, as to the circumstances of that act (the substance whereof he said he must always own), he had been compassed about with many sinful weaknesses and infirmities in the managing of it, as he had before in part hinted, which he hoped and believed were all washed away in the blood of Christ.

*Mr. Corbet's Behaviour.*

\* On the day of his execution, when he was finishing his prayer, there was a noise at the door, occasioned by some that hasted to come in (not knowing what he was about), to tell him that he must prepare for the sledge, but that he should be called for the last of the three.

In the meanwhile he fitted himself for his journey; and first bethought himself of his cap, saying, Must I not carry a cap to the gallows? and so looked out the best he had. Truly (said he) I had almost forgot it; but it may be well excused, for I have not been used to these things.

Then he took his Bible\* (which he promised to send back and give to his keeper when he should have done with it) and put it into his pocket, to carry with him as his best and surest friend and companion both in the sledge and at the gallows. Next, he put a little bottle of cordial into his pocket for his use by the way, if occasion should be; But I hope (saith he) I shall find a better cordial, else I know I shall faint, for all this. This done, and his clean linnen got on, viz. band and cuffs, with his cloak clean brushed and fitted about him, and also a new pair of gloves put on, which his wife had provided for him, and which he called his wedding gloves, he was now in readiness whenever he should be sent for; which a friend taking notice of, put him in mind of a speech

which fell from him the night before, saying, Sir, you said last night, the bridegroom was ready, and the marriage-supper was ready, and the robes and crown were ready, but that you were not ready; methinks you are ready now! and a very trim and handsome bride! To which he smilingly replied, Am I so? The Lord make me so; blessed be God, I can say I am willing to it, as I have good reason, for I am sure it is the best bridegroom that ever was that I am going to. And you need not be ashamed to go, saith his friend, considering what garments you are clothed with, and how you are decked (aluding to those words in Isa. lxi. 10.) To which he replied, Whatever we have of that kind, it is all of our bridegroom's own cost: He is not like other bridegrooms, for he purchaseth his bride, he cloaths her, and he adorns her; whatever beauty she hath upon her person, or love in her heart towards the bridegroom, it is he only, that put it in her.

Some of the wardens at the door asking if he would please to go? Doth the gentleman jaylor call for me? saith he. No, said they. Then, said he, I have not my warrant yet to go. I must stay for that first; till that come, my duty is to be passive; it being with me as it was with Peter, who was to be carried whither he would not; yet when I am called, I hope then I shall go without further bidding. Then he reminded us of being in the way of our duty, and in that to trust God; but take heed, (saith he) of neglect of duty, take heed of sinful compliances, of apostatizing from God; take heed of Superstition, Popery, Idolatry; keep close to God and his truth; Oh! trust God, trust in him, and then he will never leave you.

And now a messenger was indeed come, to tell him that the sheriffs were ready for him: And I for them, saith he; and so presently hastened away, without taking leave of his wife; which one perceiving, said to him, will you not speak to your wife before you go? O yes, said he; and then turning back, saluted her; and committing and commending her to the Lord, bid her farewell: But she clinging to him, cried out, Oh, my dear husband! my precious husband! what an husband shall I now lose! whom I have not prized, whom I have not improved, as I ought and might have done! Oh, saith she, what will become of me! At which carriage of his wife, though some tears were ready to start from his eyes, yet he conquered himself, and taking his wife by the hand, said, O my dear wife, shall we part in a shower? (which words he had used on occasion once before) he contented, said he, God will be an husband and a father to thee and thine; with other such like good words; and so kissing her, turned to his son Miles, whom he took by the hand, and blessed him also; and then hastened to the sledge, desiring a friend to stay with his wife and his son, to comfort them.

When he was bound in the sledge, and ready to be drawn away, one that had shewed him some kindness in the time of his imprisonment, took him by the hand, and asked him

how he did? Methinks, saith he, I begin to see the Lord appearing, looking up to the skies; which at that time (saith he that he spoke to) were as clear and bright as he had ever seen them: To this friend Mr. Corbet said, Farewell; and the Lord requite you for all the civilities that I have received from you.

As he rid along, he carried his Bible in his hand, with his eyes much fixed upon the world over him that he was now going to; and being naturally a very black, swarthy, melancholy man, and aged also, his countenance seemed sad and dejected at a distance, which caused such people as knew him not to think his heart within too was like his face without; but they were much mistaken; for though he abounded not, nor was lifted up with ravishing joys, as some have been, yet he had an inward, firm, solid, well-settled peace and comfort, which was not now new to him, but which he had enjoyed and lived upon many years, as is evident by many passages which came from him even in the sledge; take two for instance, 'till more come.

When one asked how it was with him, after he had been drawn a good part of his way; he gave this cheerful answer, I am well now (saith he), but I shall be better anon, when I am gotten yonder, above that place, pointing to the heavens before him.

Not long before he got to the end of his journey, one came from a friend to the sledge-side, to tell him, that endeavours were used to get his body for burial. What care I (saith he) what becomes of my body when I am dead? Let them do what they will with it; I bless God my soul is safe.

The Several SPEECHES of Colonel JOHN OKEY, Colonel JOHN BARKSTEAD, and MILES CORBET, Esq. at the place of Execution, April 19, 1662.

Upon April 19, 1662, being the day appointed for the execution of col. John Barkstead, col. John Okey, and Miles Corbet, esq. who were drawn on three several hurdles from the Tower to Tyburn, \* col. Barkstead was first brought to the place of execution, and then col. Okey and then Mr. Corbet; who at a good distance of time, one after another, mounted

\* "In one thing the temper of the nation appeared to be contrary to severe proceedings. For, though the Regicides were at that time odious beyond all expression, and the trials and executions of the first that suffered were run to by vast crouds, and all people seemed pleased with the sight, yet the odiousness of the crime grew at last to be so much flattened by the frequent executions, and most of those who suffered dying with such firmness and shew of piety, justifying all they had done, not without a seeming joy for their suffering on that account, that the king was advised not to proceed farther, at least not to have the scene so near the Court as Charing-cross." Burnet.

a cart, which was prepared for them to stand in whilst they spake to the people.

Colonel John Barkstead was the first that ascended the cart; and as soon as he was in, he lifted up his eyes to heaven, and said, Blessed be God!—And then immediately one, supposed to be of the Life-guard, cried out very loud, He is almost dead; if he be not quickly hanged, he will be dead before; therefore hang him, hang him, before he be quite dead: See how he looks.

But, being much spent, he waved speaking to that; and after he was tied up, finding the rope very tight, he would sit on the side of the cart to rest himself, but could not till the rope was somewhat loosed. After resting himself, it was expected he would say something before the other prisoners came, which was at least half an hour's distance. The Sheriff, therefore, spake to him to this effect:

*Sheriff.* You must not speak any thing in justification of such an horrid offence, for which you came hither to suffer.

To which col. Barkstead replied, I cannot speak much, by reason of the weakness of my body; I desire to get as much refreshment as I can before I speak.

Then the Sheriff spake to Mr. Hastings, who was Under-Sheriff of the county of Middlesex, Will not you dispatch one first of all?

To which the Under-Sheriff answered, We use to hang all together.

Col. Barkstead then lifted up his eyes and hands to heaven.

Then replied the Sheriff, Let it be according as it used to be.

Then said the executioner to col. Barkstead, You may be going on in your own prayers, and lose no time.

*Barkstead.* I shall be but short. And taking something out of a silver box, putting it into his mouth, and lifting up his eyes, said, I bless God, I have a better comforter than this.

Then being asked by some person of quality, Whether he were not sorry for what he had done? He answered, sir, I shall be sorry for whatever the Lord convinceth me to be a sin: When the Lord sets home that upon my soul, I shall express it unto God and man; and truly that must be from him alone.

Then Mr. Thomas Porter spake to him, I am sorry to see you there; but you will be a happy man within this half hour.

*Barkstead.* I have, I bless God, an assurance, through Jesus Christ, that I shall be so. But feeling the cart stir under him, as he did several times before, and thereby the rope pinching him, he desired it might be eased.

Then col. Okey was brought towards the cart; and when col. Barkstead saw him, he lifted up his eyes and hands.

Some of the Sheriff's officers, when Okey came to the cart, said of him, That he was a lusty, stout, brave man, as ever fought in England.

Then said the Sheriff to col. Okey, I hope I need not give you this caution, That you make no justification of this horrid offence, not to justify that offence for which you are brought hither this day.

To which col. Okey made this reply: Sir, I must not lye for God, much less for you; I hope you will give me leave to speak what lies upon my conscience, whether I am guilty or not guilty: We will speak something of what lies upon us.

Then Mr. Corbet being at the cart ready to come up, col. Okey stooping down to help him up, said, Come, brother Corbet, how do you? And clapping his hand upon his breast, said, I thank God, I have it here. Then speaking to the Sheriff, he said, May I have my hat on, or stand bare?

Which you please, said the Sheriff, you have your liberty for that.

Then col. Okey addressed himself to speak to the people as followeth:

*Colonel Okey's Speech.*

Gentlemen: The Providence of God hath brought me to this place, to pay that which every man oweth. I shall not trouble you with what is superfluous, which is, to tell you of my family, which of all the families in Israel was the least, and I was the least of that family. It is not unknown to most here, what troubles have been in this nation, and how eminently the hand of God did appear therein. Among many others that were called forth to serve the king and Parliament, (as then the cause was stated) I was one, which I did faithfully, according to the best of my power and knowledge. I here do bless God, that I was called to that work; for I am persuaded in my heart, that it was for the glory of God, and the good of his people, however it was turned at last; and if I had as many lives as I have hitherto in my head, I should have ventured them all in that cause. I have nothing upon me as to that; and I thank God, I am fully satisfied as to that cause: but I shall say no more to that, but only this in general, that as the parents of him that was born blind, being asked by the Pharisees how he came to his sight, answered, he is of age, let him speak for himself; and so the cause is sufficiently able to speak for itself. But as to that which I have been adjudged for, and am come hither to give my life for, viz. the death of the late king, I shall only say thus much, that I think most of you know, that I was none of the counsel within nor without, neither did I know any thing of the trial of the king, or who were the judges, till I saw my name inserted in a paper; and I did sit there but once or twice: but for any malice to him, I had no more than to my own soul, but prayed for him to the last hour of his life, as I did for myself; and so I have done for this king also, which is my duty to do. I have many hundred times since I went out of England, this two years last past, and before also, begged with tears of the Lord, if

there were any iniquity or malice, or any thing of that nature, in what I did, that God would show it to me; yea, the like I did this very morning, beseeching the Lord, that if I had any guilt of his majesty's blood upon me, or any hatred against him, he would reveal it to me, that I might here confess it before you all. But I have nothing upon my spirit as to that. And whatever other men did, I shall say nothing to that; as for myself, I can say again, that I got not any thing by it, but remained in the same condition; I was a colonel before, and was no more since: I thank the Lord, I am clear in that. (Then making a stop, he said, there is such a noise, I cannot speak.) And, Sir, I shall tell you now what is upon my spirit: I take what hath befallen me as righteous and just from the Lord, for my unworthy walking, for being no more zealous for God and his people, no more fruitful in my generation, and no more thankful; but as for that thing, I thank the Lord, I have no guilt upon my spirit. And as for all my other sins, I confess they are many and great; but I thank the Lord, he hath given my soul the pardon of them all, through the blood of Christ, for his name's sake, and through the riches of his grace, and his abundant mercy towards me. And now I will only speak a word to our friends here. You all know we have had many troubles, and much blood hath been shed, and there hath been a vacancy as to a single person: but the nation did earnestly desire him that now reigns; and I wish from my soul he may reign gloriously and righteously, and reign here so, that he may reign for ever. And now they have the great mercy they did desire, I wish that they would make a right improvement of it, and that they would walk in some measure answerable to that mercy that they have so much desired. I shall beg this, as a dying man, that as they have received a mercy, which they account so exceeding great, that they would walk answerable to it, that God might have the glory, and the nation might yet flourish in peace and righteousness. I shall beg of these gentlemen, (some of the guard) and all others that have a great affection to their king, that they would pray more for him, and love him more, and that they would swear less, and drink less; for if you were beyond sea, to hear what I have heard of this nation, it would make your hair stand on end, and your ears to tingle. They say certainly, that notwithstanding the great answer they have had of their desires, yet if they go on in the way of wickedness and blasphemy, which they report do abound in England, (for my part I have been a close prisoner, and have spoken with nobody almost since I came) that this nation cannot stand three years together: therefore I shall make it my humble request, that as this nation hath flourished and gone beyond other nations in piety and religion, it might flourish ten times more than it hath done these many years upon the same account. It hath been a nation that hath professed the gospel,

which indeed hath flourished here more than in any other kingdom, and so it hath had more glory and honour than other nations; and I desire it may continue, that you may have peace within your palaces, and plenty within your dwellings. Oh that every man would study in his place to fear God, and honour the king, and to give glory to God, and walk in some measure answerable to those many mercies they have and do enjoy! And, that as they have what they so much desired, every man would now beg, that the gospel may flourish, and that righteousness and truth may be in the midst of you! There is something that I shall speak more; I would be loath to speak, so as to offend you in any thing (then replied the Sheriff, I am glad to hear these expressions from you). Sir, let me tell you, because it is a very great matter, and looks like a black thing that is charged upon us in the indictment, I should have abhorred it, had there not been a face of authority, an authority that then was owned; had it not been so, I should have abhorred to have done any thing in that business, as much as any gentleman here: therefore, I thank God, I have peace as to that, and peace as to all my iniquities whatsoever, thro' rich grace and mercy. And truly as to the cause, I am as confident even as I am of my resurrection, that that cause, which we first took up the sword for, which was for righteousness, and for justice, and for the advancement of a godly magistracy, and a good ministry (however some men turned about for their own ends), shall yet revive again. I am confident, I say, that cause for which so much blood hath been shed, will have another resurrection; that is, you will have a blessed fruit of those many thousands that have been killed in the late war. But I would leave this to all my brethren and friends, that they would keep their places, wait upon God, stand still and see the salvation of God; and rather suffer than do any thing to deliver themselves by any indirect or unjust ways. If his majesty had been pleased to have given me my life, or if I had come over, or heard (for I had a warrant for my return into England from the house Commons; but I fell short two days, and so was fain to go back) time enough of the proclamation, I would, through the blessing of God, have lived quietly and rather have suffered, than have done any thing against the law of the land; and I would say this to all good men and others, rather to suffer than take any indirect means to deliver themselves, but to wait upon God, keep their way, stand still, and see the salvation of God. And God, when it shall make most for his own glory, and the good of his people, will deliver, and that in such a way that himself shall have glory in, and the gospel shall have no reproach by. But because some think we are enemies to magistracy and ministry, I shall only say this, that I always (I thank the Lord) did pray both for magistracy and ministry, and that you might have righteous laws established; that so judgment may

run down like a stream, and righteousness like a mighty river; and that shall be my prayer now, that God would give you peace and truth, and scatter them that delight in blood and war.

*Mr. Corbet's Speech.*

We are now dying then, and upon dying ground, and we are now in the presence of the great God, to whom we are now going: Truly, I desire to speak in his fear, touching that which we are here come to suffer for. I will only say this, (Mr. Sheriff) both the levying of the war, and that act that we are now accused and condemned for, if they had been done without authority, they had been abominable; and to justify that authority, I do not come here to do it. The parliament, the wisdom of the nation, that now is, hath decried it down, and said 'tis void; and the court of justice, where we have been in pursuance of their judgment, hath given judgment against us. Truly so long as that act of parliament stands on foot, judges must give judgment accordingly; but there have been many appeals about that authority, and the nation hath been governed by it, and the nations about us have owned it, and we are now going to God who is the righteous judge, and that word is upon my heart, Isa. xxxiii. 22. Truly men may judge, and they may make laws; and it is our duty to submit to the laws of the nation, or leave it if we think them too hard. But whatsoever laws are made, God is our judge, and he will judge this cause, and God is our lawgiver: It is a Scripture phrase, "God is our lawgiver; and he is also our king, and he will save us." He will judge the cause of his people." And I hope that the minds of sober men will wait for that judgment. Truly, Mr. Sheriff, as concerning that common aspersion laid upon us, That we should be against magistrates and ministers; the Lord knows it is my principle, and I desire there may be a standing, settled government, a Godly magistracy, and likewise a Godly ministry in this nation: And I pray God grant that this people may be blessed under them. And truly, for the magistrate that now is, the hand of God hath brought him into the throne: While I have been in other nations, I have blessed God, and desired the Lord that he may rule for God, and be a terror to evil-doers, and countenance the true professors of the true protestant religion, that he may defend both religion itself, and the professors of it. Truly there have been many (as they call them) sects and heresies, that have sprung up in these later times; but blessed be God, there have been also great appearances of God, and much light is broken out, more in this nation than I could ever hear of or see in the nations round about, though they profess the same religion. I have been among many whom they call reformed-protestants; but of true protestants, such as hold their profession in their lives, there are more in this nation than elsewhere, and they are not to be compared for number, blessed be God, and the Lord en-

crease them and multiply them daily; for the glory of the nation is not in a multitude of people only, but of such as fear the Lord, and worship God, and lift up his name: And truly my desire and prayer is, That the gospel, the true and glorious gospel of God, the gospel of Jesus Christ, may have a free course in this nation, and may be glorified in the lives of men, as well as in their words.

As for the particular way of worship that I am of, I shall only say, That in my judgment and conscience I have, and do understand that which is called the congregational way to be nearest to the word of God; and I do freely bear my testimony to the confession of it, that it is extant, which was made at the Savoy: But with this, that also of the assembly of divines that was made in the time of the Long Parliament, and the declaration they made concerning religion, saving only as to the discipline-part: As to the other, I do fully subscribe unto it; for I think that the said confessions are the most clear of any protestant confessions (whereof I have seen divers) that are extant; and in foreign parts they will confess as much.

Mr. Sheriff, as to what I shall desire for the nation (for truly we are taking our leaves of it, and we shall see your faces no more), that which I upon the knees of my soul do beg for this nation, is, That as they are protestants in name, and take that upon them in profession, so their lives may be answerable. Truly nothing doth more dread my spirit, and cause me to fear the wrath of God to come upon this nation, than when I hear that amongst those which bear the names of protestants, there is such profaneness, drunkenness, swearing, and such abominations that are not to be named, no not among moral men. The Lord stop the course of them, as also the growth of popery and superstition, and that the truth of God may break forth, and that men may love it; for truly the gospel is worth the loving, the truths of God are worth loving: And if we love them, then truly God will love us, and bless us.

Mr. Sheriff, for my own part, if there were any here that I knew I had wronged, I would ask them pardon and forgiveness, if I knew them. I must confess, I have been in many public actions; I have been of all the parliaments since the late king's reign; and in the beginning of this parliament, I must confess, I being called to it, did think it was my duty to act according to the ability God gave me, and to deny myself. I thank God for it, I came with an estate to the parliament; and I bless God for it, I spent it while I sat in the parliament: And truly, I thank God, they cannot find any estate that I have forfeited; for I have none to forfeit. This business, that we are here for, I was very far from being a contriver of. When the bill came into the house, I must confess, I being a member of the parliament, did somewhat wonder at it, and I did speak against it; but when it was passed, and I was named to be a Commissioner, truly, it being done by that that was then called the au-

thority of the nation, I did think I was bound to obey in that respect. I will say no more. I never sat but once in that they called the High Court of Justice; but for that I'll say no more. I do not come to condemn that authority and power; neither will I now (because the parliament, and the nation, and the spirits of men are against it) justify it. [And being a little interrupted, he said,] I will not speak to offend any man. Truly, I thank God, I never got any thing, either of king's lands, nor bishops', nor dean and chapters' lands; I never knew what belonged to the trade of buying or selling lands, I thought I was in a better way, looking to that station which God had called me to. And as my brother said, Let men hold to their stations, and to what God hath called them; and so serve God and their country, and let them not be afraid. And I think it is the honour of good Christians, and of good people, to be obedient to the government they are under, and to uphold it to the uttermost. I have not much more to say. If any man hath done me any wrong (as I perceived when we came along some people's tongues were against us), I pray God forgive them. I desire not to open my mouth against any of those reproaches we met with. Some I perceived did express their love, and their love to my soul; and I hope God will hear their prayers. And while we are in the land of the living, I shall desire to do as we have done since his majesty came to the government. When we were in Holland, we did pray for the king and the government, and desired of the Lord that they might settle peace in the nation; which, if we love our country, we ought to rejoice in, and our private interests must give way to it. And truly, I shall desire even from my very soul, that if any man here or elsewhere hath wronged me, that the Lord would forgive them. And truly the Court of Justice that passed their judgment upon us, as the law stands, I think, did according to their places. And if we may have liberty in a few words to commend ourselves to God, I shall trouble you no further; and I thank you for your civility.

Then colonel Okey spake a few words, as followeth:

*Colonel Okey's Speech.*

Mr. Sheriff, I will not trouble you with any thing that he hath said, only something which I thought to speak, as to my own judgment. But this I would leave among you that live in the land of the living. I have been in most reformed places where they call themselves Protestants; but I must tell you, there is a great deal of difference between their ministers and the ministers that be in England; and so of their professors. And therefore, as God hath given you such ministers as scarce any other nation hath besides, so that you would honour and respect them; as also those that are professors and godly people; not such as have a shew only, but those that are really such, that you would countenance them, and honour them;



for as for ministers and people that live according to the world, I think there are not such again in the world as are to be found in these nations. I shall add one word further.

I was, as near as I can reckon, a major and colonel, sixteen years in the army (I only speak that, because I have a word to say to another thing), I do not know whose ox or whose ass I took away in that sixteen years time; and if I have done any man any wrong, I hope and desire they will forgive me, as one that had many failings. And whoever hath proceeded against my life, either in England or Holland, for there was one (who formerly was my chaplain) that did pursue me to the very death, where I remained but two nights, and was going back again (for I had done my business), but both him and all others upon the earth I forgive as freely as I desire the Lord to forgive me. I have no malice either to judge or jury, but desire that the Lord would forgive them; as also those in Holland that sent us over, contrary to what they did engage to my friends: we will say nothing of them, but pray God that our blood may not be laid to their charge, nor to the charge of any in England.

Then colonel Barkstead addressed himself to speak, as followeth:

*Colonel Barkstead's Speech.*

Mr. Sheriff; I shall, as near as I can, observe your order, and not willingly do any thing that shall give offence. I must confess the weakness of my body is such, which hath not been of a day, but of a long time, that it will not give me liberty to speak much; and I have had this advantage, that my brethren have spoken before me; and were I to speak at large, I must speak over the same things which they have spoken already, and I am unwilling to trouble you with that, because you said your time was overslipped, and therefore I shall only speak to the cause as it was at first stated (and, I hope, without offence, we may say something to that, so far as the acts of parliament have sealed it up, or rather left it open). Truly therein I did engage very freely at the beginning of the war for king and parliament, and in the place to which I was chosen, I bless the Lord he made me faithful to those I served: As to what hath been since that, I shall forbear to speak to, only in the general say, That before and since I came into this late trouble, I have begged of the Lord to give me a sight of all my sins, and shew me a pardon in the blood of Jesus Christ; which, through free grace and mercy, I can say the Lord hath done. I could not have stood with so much comfort as I do now at this time, if he had not given me an assurance of the pardon of all my sins; and where he hath spoken peace, there is none can speak war or trouble. I conceive it not proper to give you here an account of my faith; for if I should, I should go very little aside from my brethren that have spoken before me: That which hath been my judgment and my practice, hath been the congregational way; I must own

that, and do. I should much rejoice to see a spirit answering that great mercy that the Lord hath given to this nation; I mean that great mercy that he hath bestowed in giving them the Gospel, and that in such a manner, as truly we, though we have been some hundreds and thousands of miles among the Protestants abroad, yet I do not know it to be so pure as it is in this isle, blessed be the Lord; and I hope to the nation of England the Lord will give hearts to walk accordingly.

And as to the business of the government of this nation, as it now stands. I have prayed for it, and can pray for it, and shall, as long as I have breath, pray for it; and do, from my soul, desire that the Lord would bless the king, and give him a heart to rule for him, and his glory, and then I am sure the Lord will prosper him.

Indeed, as to those that fear the Lord in the nation, I could wish that the Lord would settle them, and make them of one mind; but that is the work of the Lord, and it must lie there; and truly he will do it in his time. I must confess, I speak the rather to that, because there hath formerly been something acted by me towards persons that were not of my judgment, which I have seen since was very hard; and I bless God I have seen it, and have been sorry for it; and therefore I do desire, that all that fear the Lord, would make it their work and their business to study to love God, and to love one another, and to love the nation wherein they live, and to give no disturbance to it: for certainly, sir, I should leave this, as that which the Lord hath settled upon my heart; their work is to sit still, yea, their strength is to sit still, for the Lord will do his work in his own time; and when he comes to do the work, there is none shall hinder. I think you have had all experience of it in the late works which the Lord hath done; for I must own it his.

Indeed, sir, I am sorry that my weakness of body doth prevent me from speaking more to you; yet I do bless God that I have this opportunity. All I shall say further is, that there is a truth, and I hope I may speak it without offence, that is much upon my spirit, and I am confident I shall speak it without any offence at all. I think we are all here Christians, and there is none here, I think, but saith the Lord's prayer, and says, Thy kingdom come, thy will be done in earth, as it is in Heaven, &c. and I hope they go through the prayer, and say why they do pray that prayer; and also say, For thine is the kingdom, the power and the glory, for ever and ever. Amen. God hath given the kingdoms of the earth to Jesus Christ, he shall reign; and happy and blessed is that king and nation that hath him for their king. And certainly, for his majesty that now is, to reign under Jesus Christ, is no dishonour at all to him: For Christ doth, and shall rule over all the kings, princes, and nations in the world. And therefore, indeed, this is that kingdom that is most certain, and that we do desire, and all pray that it may come; and I do wish that all persons would

have a tenderness, and not be at enmity with, nor hate, nor, as much as they can, cut the throats of those that own that kingdom, and the coming of that kingdom.

As to other things, there hath been so much said, that I shall forbear speaking; only this, as to the business of the king, I bless God I can say it, I was no actor or contriver, either within or without. I was many miles from this place when that was doing: I was put in by the authority that then sat, and I was called and chosen to that work; and truly, what I did, I did without any malice, without any contrivement in the least; and did, even to the very last, pray for him: and since his majesty, that now is, came to the throne, I have, as I have prayed for my own soul, prayed for him, and that he may reign in peace and righteousness, to the glory of God, and the good of all the people of the nation, I shall not trouble you with more, because I see your time is past, and my weakness is such, that I am necessitated to break off.

Then col. Okey spake further, as followeth:

Mr. Sheriff; It is not only our judgments now, but it was our practice when we were beyond the seas, we did shun any disputes, nay we avoided occasions of seeing our own countrymen, because we would have nothing to do with the affairs in England, but to pray for them, and to persuade to be quiet, and to sit still; so that we may say, as Paul did in another case, They neither found us in the Temple disputing, or wrangling, or stirring up the people; only our work was to pray for them.

Then Mr. Corbet said, "Now we have done speaking to men, we may now speak unto our God; truly, he must help us, and give us his own spirit: men may say prayers, and read them, but to pray in the spirit, and to pray so, as to be accepted with God, requirith much strength and assistance from him." Then Mr. Corbet addressed himself to prayer.

*Mr. Corbet's Prayer.*

O Lord our God, our dear and heavenly Father, thou that art the great and mighty God, the God of glory; all the nations of the world are unto thee, as the drop of the bucket, and as the dust of the balance. O Lord, what are we then, that are dust and ashes, sinful dust and ashes? O look upon us, look upon us in our Lord Jesus Christ, that great mediator. O we desire to come to thee in the name of that blessed mediator, we pray thee let us have acceptance through him: O that we might come unto the throne of grace through him, and obtain mercy at thy merciful hand, and find grace and help now in this time of need. Truly, Lord, it is a day, a day of need for thy poor worms, that stand in thy presence, that are despised of men, that are condemned of men, as not worthy to live in the world. O our God, thou mayest also justly destroy us, and thou mayest justly condemn us,

and then woe be to us. Oh! Forgiveness belongs unto thee, mercies belong unto thee. O Lord, we acknowledge our iniquities here in thy presence, and in the face of this great people. O Lord, against thee, against thee only have we sinned, our iniquities are gone over our heads, they are a mighty burthen, too heavy for us. O Lord, we desire especially to bewail our gospel-sins, our walking unworthy of the gospel, our baseness under all the means of grace that we have enjoyed, our unthankfulness for those glorious appearances of our God in these days, in these nations. O we have withheld thy truth in unrighteousness. O we desire to bewail our sins against love, and our sins against light, and our sins against thy mercies; though we have professed the gospel, and the truths of Jesus Christ, yet, O Lord, where is that love, and that fruitfulness that should have been found among us? O how much dishonour hath thy holy majesty had from us in all our stations! O we desire also to be humbled for our family sins and the sins we committed in our stations, that thou our God dost call us to. O Lord, we desire to acknowledge that thou art just and righteous in all thy chastisements, thy great chastisements that have been upon the nation, and upon us, and our families: we desire, Lord, to humble ourselves before thee, and to cover our faces with shame, here in thy presence, and in the presence of this great assembly. Woe unto us, for we have sinned against thee! But, Lord, are there not mercies with thee, are there not tender mercies, multitudes of tender mercies, that thou mayest be feared? Truly, such poor wretches as we are, coming in unto thee, have mercy from thee through Jesus Christ. O these sins, of ours, and of every one of us, and those multitude of sins that thy poor worm that now speaks, is guilty of in thy sight, our Lord Jesus Christ he hath borne, he was made sin for us. Now, Lord, where sin is, there is shame, and grief, and curse, and wrath, and death. O Lord, hath not he borne our sins, and so likewise our shame, and carried our sorrows? O Lord, what shame was cast upon him, as thy poor worms are at this day, and at this time, a shame in the eyes of many present! O Lord, he was despised and rejected of men. O did not he suffer death, did not that righteous one, that holy one, suffer death? O he died for those sins of ours; he was cut off from the land of the living; he poured out his soul unto death. Nay Lord, blessed Father, it pleased thee to put him to grief, and he hath borne our sins; and, O Lord, the chastisement of our peace was laid on him; he was made sin for us. Blessed Lord, we will lay all our sins upon the head of the scapegoat, upon our Lord Jesus Christ; him thou hast given to be a propitiation. O dear Lord, in him, and through his blood, thou hast found out a way of atonement for sin; and by that one oblation that he once offered, he is able to save to the uttermost, all that come unto thee through him. Lord, we come in the blood of

that mediation, we desire to lay hold on the atonement and propitiation that he hath offered up unto thee : O he hath satisfied thy justice ; he that knew no sin, he was made sin, and thou didst lay our sins upon him, and thou hast accepted of that satisfaction that he hath made, and thou hast raised him from the dead, and set him at thy right hand ; and though he died but once, yet, by that one oblation, he hath satisfied for all our sins. O here is the blood of God, the Lord Jesus Christ, which was God and man. O that righteous one, he loved us, and died for us, that we might live ; he bare thy wrath, that we might be reconciled, that we might find mercy, yea, and through him thou art merciful. Thou God of mercy, shew mercy to our souls, and to the souls of all those in this great assembly that is met here ; and, dear Father, accept us in his mediation. O it is our comfort, though he died but once, having satisfied thy justice, thereby he doth ever live to make intercession for sinners : Lord, here is comfort for poor wretched sinners ; the great Mediator, that is so pleasant in thy sight, whom thou hearest always ; O he doth continually live to make intercession for us ; we pray thee, in and through him, accept these poor prayers of ours, these poor petitions and requests of ours, which we make known to thee : O it is pardoning love we seek, O reconciliation with thee, before we go hence, and be seen no more. O Lord, we do believe that thou hast sealed our pardon, that thou art reconciled to us, and that there is peace betwixt thee and our poor souls, through that great peace-maker, else it would go ill with us, now we are going out of this world. O come and sprinkle every one of our souls with that precious blood. O that we, that are in ourselves vile wretches, may yet stand righteous before thee in his righteousness. O the same righteousness of Christ, which thou hast appointed ; for thou hast made him to be righteousness for us, and sanctification and redemption, and he is the Lord our righteousness. O put that robe upon us, that glorious robe of his righteousness, that we may be presented now, not having our own righteousness, for that is like a vile filthy rag, a menstruous cloth ; but cloath us with that righteousness, that we may be presented before thee, in and through him, without spot, and without wrinkle, before thy presence, through him, with exceeding joy. O thou hast made him our king ; O that he would now undertake our cause, the cause of our poor souls. Come, Lord Jesus, thou king of saints, come, tread our enemies under our feet, especially that great enemy. O Lord, he hath conquered Satan, he hath borne our sins, and hath condemned sin. O he took the likeness of sinful flesh, and in his flesh condemned sin in the flesh ; O that now, through his righteousness, we might fulfil thy holy law ; he is our righteousness, his obedience we now fly to. O dear Lord, thou hast set before us, as a refuge to fly unto, that blessed hope, even those glorious things the gospel holds out. O the hope

of eternal life, which thou that art the faithful God that canst not lye, hast promised unto us. O thou hast set this hope of perfect justification and perfect sanctification before us ; O thou hast held it forth, this same hope of righteousness, thou hast set it before us, and now we fly unto it in this day of our distress, to lay hold upon it. O thou art pleased, Lord, that we might have strong consolation, thou art pleased to confirm this thy covenant with an oath, that by two immutable things, the covenant of God, and the oath of God, we might have strong consolation. Now we fly to this covenant through Jesus Christ. O be a God in covenant with us ; Father, say to us every one, that we are thine, that thou art in covenant with us ; and then say, fear not, worms. Else, ah Lord God, now were we to encounter with death, that king of terrors, what would become of us ? But, O Lord, speak peace to us, speak comfort to us, thou God of comfort ; O comfort our hearts ; O Lord, it must be done by our dear Lord Jesus Christ himself. Our Father hath given us everlasting consolation ; come and comfort our hearts, O comfort us with thy love, O Lord ; O set thy banner of love over us. Thou dost not despise the affliction of the afflicted, blessed be thy name. We have found thee, Lord, we bear witness to thee before this great assembly. O thou hast not despised the affliction of the afflicted, thou hast seen us in our low estate, and been very good to us. We have had a banner of love over us, and we bless thy name for this very affliction that thou hast laid upon us. O that we could bear witness to thee in the face of this great city, and before this great assembly, of thy goodness and faithfulness, and of thy mercy, which endures for ever. O we have tasted of thy love, and it's good to cleave unto thee. Father, thou art a refuge to the poor, and strength to the poor and needy : Come, and be a refuge to us in this great storm ; truly we are to go through a great storm before we come unto thee ; O that we may find death a sweet in-let and a passage into thy blessed arms, through Jesus Christ. When our poor souls shall be coming to thee, we pray thee give thy angels charge over us, and strengthen us against the fears and terrors of death. O let fresh strength come from Jesus Christ at this present ; it is not all the graces we have had, will now do us any good, unless we have fresh supplies. Our fresh springs are in thee, arise, O spring. O the fountain of life, now let it come flowing upon our poor souls, that we may be presented before thee with exceeding joy. Lord, let us hear that same joyful sound, Come ye blessed of my Father. O though we be despised of men, and some they reproach us ; O but Lord forgive them, and the Lord pardon them ; whosoever hath done us any wrong, the Lord pardon them, through Jesus Christ we beg it. And, blessed Father, we pray thee let us hear this joyful sound, Come, ye blessed of my Father, inherit the kingdom prepared for you ;

O there is a crown of life laid up for them that love the Lord. Thou knowest thy poor worms desire to love thee; O dear Lord, shed abroad thy love in our hearts; and though we be now dying, yet we desire to love thy name; though thou art now correcting us, yet we have cause to love thee, and bless thee; O shed abroad thy love in our poor souls. O Lord, we pray thee come and accept us, and let our cry come and pierce the heavens. O Lord, let us now be looking for, and hastening to the glorious appearing of that blessed hope, our Lord Jesus Christ. He that shall come, will come, and will not tarry; come quickly, Lord. O that thy servants could see thee, as thy servant Stephen, (in much what such a condition as we are in) he saw Jesus Christ standing at thy right hand. Though we cannot look upon thee with our bodily eyes, yet we desire to see thee with the eye of faith. O we pray thee look down upon us, and, Lord, strengthen our faith, and that our faith may not fail; O let us obtain the end of our faith, the salvation of our souls. And O that thou wouldst strengthen us according to thy glorious power, with all patience in this hour. O Lord, though our hearts would faint, and flesh faint, O Lord, thou art the God of our strength; come lay hold upon us, lead us by thy righteousness, and let thy everlasting arms be under us. O dear Lord, let us taste of love in this bitter cup; O we pray thee let us see thee in mercy; do not correct us in thy wrath. O we bow our knees to thee, let not this affliction be in thy wrath. We are under the wrath of men; but Lord, do thou forgive, and let us be under thy love; and lay no more upon thy poor worms, than the strength that thou shalt now give us through Jesus Christ, will enable us to bear; and come and take us into these mansions that our Lord Jesus Christ hath prepared. Is it not thy promise to go and provide mansions for us? Our fore-runner is gone to appear for us in heaven, now before the throne of grace; O hear us up in him, and dismiss us now with a blessing. And the Lord bless this nation, the Lord bless the government, Lord continue thy truth, keep the Gospel still in this nation, which hath been the glory of it; O let thy poor people glorify the Gospel in their lives, it is that we beg of thee for the Lord's sake; and do thou prevent those heavy judgments that hang over our heads. O Lord, pardon those great abominations that thine eyes do see, that profanation of the sabbath. O the spirit of profaneness is broken out among us! O we desire to be humbled, and mourn for it. Lord, turn from thy wrath, and, dear Father, continue thy Gospel in the purity of it. O the Lord forgive the sins of those that bear thy name. Thy wrath is kindled against us, and therefore it is that thou dost rebuke us; but we pray thee give thy people a spirit of returning to thee; and do thou heal our back-slidings, and give us a spirit of love to thee, and to thy truths, and one to another, and take away the envy betwixt Ephraim and Judah. Thou seest

these bitter contests; we pray thee put a stop to them; and let thy people be of one heart and one mind, and let them mind the great things of Jesus Christ, and those truths that are after godliness; let those be more and more enquired after, and embraced by the people of these nations, and the Lord grant that those superstitious and idolatries that are a provocation in thy sight, may not be brought into the nation; for thou art a jealous God, and if we go that way, thy wrath will be kindled once more; but Lord, shew mercy to England, and do not take away the Gospel, nor remove thy golden candle-stick from the midst of us. And the Lord bless the government, and the king thou hast set over us; that which we beg of thee for him, is, that he may rule righteously; and let him hate whom thou hatest, and love those whom thou lovest. And bless the ministers of the word; that they be faithful to thee, Lord, continue them in their liberties, and let not our teachers be removed into corners; bless them that are faithful to thee, and make them more faithful.—(Being interrupted, after a while he proceeded as followeth.)

O Father, we have many suits to put up unto thee; but we now commit ourselves unto thee; here we are, Lord, we will roll our souls upon thee, and rest and wait for thy salvation. We pray thee accept of us; forgive the sins of this duty; O sprinkle the blood of the Lord Jesus upon us, and take us into thy arms. Father of mercy, that comfortest us in all our tribulations, come and comfort us in this hour, and do thou accept of us in Christ, for through him we offer up ourselves, our souls a sacrifice. Father, accept of us and our sacrifice, &c. (The conclusion was omitted, because of a bustling among the horses.)

Then col. Okey made another long prayer, much to the same purpose as Corbet's, which being so like, is purposely here omitted.

Next, colonel Barkstead addressed himself to prayer, having first spoken to the Sheriffs these few words following.

Mr. Sheriff, I do see your time is spent, and we are drawn up into a very narrow compass; and I hope you will take my word now as before, I shall only speak a word or two unto the Lord, and no more.

*Colonel Barkstead's Prayer.*

O Eternal, and ever-blessed Lord God, thou who sittest upon the highest heavens, who hast the highest heavens for thy throne, and the earth for thy foot-stool; we poor creatures are here, by thy providence, brought at this day, to this place, at this time, and by thee it is that we are in the condition we are now in; for which, O Lord, we bless thee, and for which we can bless thy name. Blessed be thy name, O Lord, that thou wert pleased, before thou broughtest us hither, to speak peace unto our poor souls, in the blood of Jesus Christ; and blessed for ever be thy name, that thou givest us assurance of peace, pardon, and reconcilia-

tion to our souls at this very minute, blessed be thy name. Dear Father, for the Lord's sake, to continue it; and, oh! draw forth the hearts of thy poor creatures, even while one blast of breath is in us, to bless thy holy name. Father, we pray thee, remember the nation in which we live; the king, whom thou hast set over the nation; Lord, make him thine, and cause him to rule for thee in righteousness, and for thy glory, that so, Lord, he may rule to the comfort of all that fear thy name. O dear Father, look in mercy upon all that fear thy name in the nation, make them all of one heart and mind, to advance thy name and glory, to live in unity one with another, and to make it their business to seek peace, and pursue it, that so they may thereby truly advance the kingdom and sceptre of Jesus Christ, who is coming, and will come. O dear Father, carry forth the spirits of thy people to love thee, and one another, and to walk closely, and humbly, and holily before thee all their days. Remember the relations of thy poor creatures here before thee; Lord, do good to them that we leave behind us, we commit them into thy arms. Lord, take them into thine arms: O Lord, thou hast said in thy word, 'Leave thy fatherless children, I will preserve them alive, and let thy widows trust in me.' Lord, it is thy word, and this is thy command, that we should leave them with thee; therefore we leave them in thy arms. Dear Father, we desire, from the bottom of our hearts, freely and fully to forgive all that we any ways think have done us wrong in any kind whatsoever, (freely and fully) either in England or elsewhere; and we pray thee shew kindness to those that any ways have shewed kindness to us; for the Lord Jesus sake reward all their labour of love a thousand fold into their bosoms. Look in mercy upon the chief magistrates that are here at this time; dear Father, pardon their sins, and reconcile them unto thyself in the blood of the Lord Jesus Christ, in which we pray thee wash their souls. And, O Lord, as for the person that is now appointed to take away our lives, and to destroy our bodies, dear Father, do not thou destroy his soul, but wash his soul in the blood of Jesus Christ: Even that person that is to wash his hands in our blood, O pardon him, and let not any of his sins be remembered before thee. We leave ourselves with thee, and blessed be thy name: Thou hast been good unto us, and thy presence is with us; and there is nothing that gives trouble to us at this moment. Father, continue this thy loving-kindness to us. O Lord, thou hast not (blessed be thy name) caused death to be terrible to us; no, Lord, thy poor creature can say with freedom and comfort, that there hath not been any thing of trouble or terror that hath passed thy servant since he came into this place, either for what he is to suffer, or the manner of his sufferings; but here he is before thee, and begs farther help and strength from thee, being willing to surrender up his soul to thee, in and through the Lord Jesus Christ.

Then col. Okey spake as followeth:

"I did break off duty, because you desired it, and I would not be troublesome to you."

Then he very earnestly expressed himself further, as followeth:

"O love the Lord, and hate all things that are evil. I have found by experience, more evil in the least sin, than good in any thing this world can afford; therefore I beg it of all that are here, to love God, and to hate that that is evil. The Lord give you peace and truth! I hope our relations shall not fare the worse for us, but that you will shew them kindness. And as to what my brother said, I thank the Lord, I have the assurance of his love, and the pardon of my sins through the riches of his grace, and free love in Jesus Christ."

After this, col. Barkstead called a young man, who was known to him, and taking a silver box out of his pocket, he charged him to give it to his daughter.

Their speeches and prayers being ended, the executioner cleared the cart of the rest of the people who were gotten in, and then pulled down their several caps over their eyes, and upon the lifting up their hands, the cart was drawn away; at which time, col. Barkstead especially was heard to say, Lord Jesus, receive our souls! And after he had hanged for a little space, he lifted up his hand.

That which many did especially take notice of, was, that there was not so much as the least attempt made by any to raise a triumphant shout upon the drawing away of the cart; but there rather appeared the symptoms of an universal face of sadness in that vast and generally tumultuous assembly, who were the spectators of their several deaths.

They all hung near about a quarter of an hour: The first that was cut down was col. Barkstead, who was quartered according to the sentence; the other two hanging all the while. The next cut down was col. Okey, Mr. Corbet hanging still, who, after col. Okey was quartered, had the execution done upon him also, according to the sentence. Their several quarters were brought back to Newgate, about five of the clock in the afternoon, to be boiled.

#### *A brief Account of Col. Okey's Funeral.*

When col. Okey's body was quartered, it pleased the king to send a warrant to the sheriff of London, to deliver the macerated body to be buried where his wife should think meet; which thing being granted, without petition or application from her, or his relations; and the rumour of his funeral suddenly flying about the city, and the place appointed at Stepney, (where his first wife lieth in a fair vault, which he purchased formerly for a burying-place for him and his family,) there was a numerous concourse of sober, substantial people assembled to Christ-church, to attend the corpse, and some thousands more were coming thither to that purpose; so that there were in view about twenty thousand people attending that solemnity at and coming to the place aforesaid, who in a solemn and peaceable manner behaved

themselves, as that affair required : Yet it so pleased the king to revoke his first grant to Mrs. Okey, and by the sheriff of London to disappoint and send home again the company attending the funeral ; which the sheriff with much harshness, and many bitter words, did his work. The people, though much troubled at the disappointment, yet, so soon as they understood the king's pleasure, departed, and left the mangled limbs to the disposal of them that had devoted them to the gibbet and ax : the company left many a thousand sighs to attend him to his then unknown grave.

That night the body was carried to the Tower of London, and there, by Mr. Glendon, parson of Barkin, was buried with the service-book, afresh wounding his bleeding limbs thereby ; but rapes are imputed only to the ravisher. Mr. Glendon could not but say, that his body was laid there, in sure and certain hope of a joyful re-urrection. His testimony was true, though a poet of their own. And now there he lies, and the Tower of London is his tomb. His epitaph he partly writ in the hearts of thousands at the place of execution.

The others who were convicted, having surrendered themselves upon the Proclamation in pursuance of 12 Car. 2. cap. 11. § 36, could not be executed without consent of parliament ; which never being asked, they suffered only imprisonment, and confiscation of their estates.

Besides these Trials, other proceedings were had against others of the King's Judges : By Stat. 12 Car. 2. c. 30, Oliver Cromwell, Isaac Ewer, John Alured, Richard Dean, Thomas Horton, Philip Skippon, John Bradshaw, Tho. Hammond, Thomas Pride, sir John D'Anvers, sir Thomas Maleverer, sir William Constable, sir John Bouchier, sir Gregory Norton, John Blackstone, Francis Allen, Percume Pelham, John Venn, Tho. Andrews, Anthony Stapely, and John Fry, who all were dead, were attainted : And not content with this, the Houses of Lords and Commons (notwithstanding Johnson, tells us that " English vengeance wars not with the dead ") Resolved, " That the carcasses of Oliver Cromwell, Henry Ireton, John Bradshaw, and Thomas Pride, (whether buried in Westminster-Abbey, or elsewhere) be, with all expedition, taken up, and drawn upon a hurdle to Tyburn, and there hanged up in their coffins for some time ; and, after that, buried under the said gallows : and that James Norfolk, esq. serjeant at arms, do take care that this Order be put in effectual execution by the common executioner for the county of Middlesex ; and all such others, to whom it shall respectively appertain, who are required, in their several places, to conform to, and observe, this Order, with effect ; and the sheriff of Middlesex is to give his assistance herein, as there shall be occasion ; and the dean of Westminster is desired to give directions to his offi-

cers of the Abbey to be assistant in the execution of this Order." \*

\* This Order was not executed till January 30, after the dissolution of this parliament, when a Chronological Historian of these times gives us this account of it : " This day, Jan. 30, 1660-1, the odious carcasses of Oliver Cromwell, Henry Ireton, and John Bradshaw, were taken out of their graves, drawn upon sledges to Tyburn, and being pulled out of their coffins, there hanged at the several angles of the triple tree, till sun set ; then taken down, beheaded, and their loathsome trunks thrown into a deep hole under the gallows. Their heads were afterwards set upon poles on the top of Westminster-hall." *Gesta Britannorum* : or a succinct Chronology, &c. By sir George Wharton. London, 1667.

Arnot, in his Collection and Abridgment of Celebrated Criminal Trials, &c. p. 65, gives us the following Case of Posthumous Vengeance in Scotland :

" A royal warrant was directed to sir Wm. Hart, and the other Judges of the Court of Justiciary, setting forth, in the usual bombast stile of treasonable indictments, that the deceased had been guilty of most high, horrible, and detestable points of treason. That the same was verified by two or three witnesses ; but that the deceased obstinately persisted to deny the charge : That he attempted to make his escape from Edinburgh Castle, which rendered his guilt the more manifest ; and that, in the attempt, he had brought about his own miserable and shameful death. The warrant, therefore, required the Court to pronounce sentence on the deceased ' Francis Mowbray, ' now presented on pannel' (i. e. produced at the bar) to be dismembered as a traitor ; his body to be hanged on a gibbet, and afterwards quartered ; his head and limbs stuck up on conspicuous places in the city of Edinburgh ; and his whole estate to be forfeited. The warrant is dated at Holyroodhouse, 31st January, 1665, and is subscribed James Rex, Montrose Cancellor, Marr, Herreis, Halyrudhouse. Doom was pronounced accordingly."

" This, perhaps," says Arnot, " exceeds every act of king James's tyranny. For, 1st, this sentence of forfeiture, pronounced after death, was not adjudged by parliament, but by the Court of Justiciary, in consequence of a royal edict. 2d. No summons of treason was executed against the heirs of the deceased, nor any defender cited, unless the corpse, which was produced at the bar, can be called a defender. 3d. No specific charge was exhibited against the deceased ; nor any thing but a general accusation of treason and lèse-majesty, which in those days, was so far from conveying any precise and definite idea, that it might have been any thing which occurred to the whim of the king's advocate, for that of his royal master. 4th. No proof was adduced in court, no jury called, nor verdict returned,

Nevertheless there is reason to doubt whether the Order could be executed as the two Houses proposed. In a Note to the second volume of Kennett's History of England, page 229, 2nd edit. which has been copied into an anonymous Life of Cromwell, published in the year 1724, it is said, "One gentleman gave me this Note in writing: 'Soon after the Restoration, the then serjeant of the House of Commons, was ordered by the house to go with His officers to St. Peter's, Westminster, and demand the body of Oliver Cromwell, buried there, to be taken up in order to be disposed of in the manner the house should adjudge fitting. Whereupon the said Serjeant went, and in the middle isle of Henry the 7th's chapel, at the East-end, upon the taking up the pavement, in a vault found his corpse, in the inside of whose coffin, and upon the breast of the corpse was laid a copper-plate, finely gilt, inclosed in a thin case of lead, on the one side whereof were engraved the arms

establishing the charge upon which the sentence of forfeiture was pronounced."

"Towards the latter end of this year," says Neal, "the court and bishops, not content with their triumphs over the living Presbyterians, descended into the grave, and dug up the bodies of those that had been buried in Westminster-Abbey in the late times, lest their dust should one time or other mix with the loyalists; for, besides the bodies of Cromwell, and others already mentioned, his majesty's warrant to the Dean and Chapter of Westminster was now obtained, to take up the bodies of such persons who had been unwarrantably buried in the chapel of king Henry 7, and in other chapels and places within the collegiate church of Westminster since the year 1641, and to bury them in the church-yard adjacent; by which warrant they might have taken up all the bodies that had been buried there for 20 years past. Pursuant to these orders, on the 12th and 14th of September they went to work, and took about 20, among whom were,

"The body of Elizabeth Cromwell, mother of Oliver, daughter of sir Richard Stewart, who died Nov. 18, 1654, and was buried in Henry the 7th's chapel.

"The body of Elizabeth Claypole, daughter of Oliver, who died Aug. 7, 1658, and was buried in a vault made for her in Henry the 7th's chapel.

"The body of Robert Blake, the famous English admiral, who after his victorious fight at Santa Cruz, died in Plymouth Sound, Aug. 7, 1657, and was buried in Henry the 7th's chapel; a man, whose great services to the English nation deserved a monument as lasting as time itself.

"The body of the famous Mr. John Pym, a Cornish gentleman, and member of the long parliament, who was buried in the year 1643, and attended to his grave by most of the lords and commons in parliament.

' of England, impaled with the arms of Oliver, and on the reverse the following Legendæ :

"*Oliverius Protector Republicæ Angliæ, Scotiae, et Hiberniæ, Natus 25 Aprilis, 1599, Inauguratus 16 Dec. 1653, Mortuus 3tia Sept. A. D. 1658, Illic situs est.*

"The said Serjeant believing the plate to be gold, took it pretensively as his fee, and Mr. Gifford, of Colchester, who married the Serjeant's daughter, has now the plate, which his said father-in-law told him, he came by in the manner above related.

"Yet another Account is given, as averred and ready to be deposed (if occasion required) by Mr. Barkstead, son to Barkstead the Regicide, who was executed as such soon after the Restoration, the son being at the time of Cromwell's death about the age of 15 years. That the said Regicide Barkstead being Lieutenant of the Tower of London, and a great confidant of the Usurper, did among other

"The body of Dr. Dorislaus, employed as an assistant in drawing up the charge against the king, for which he was murdered by the royalists, when he was ambassador to the States of Holland in 1649.

"The body of sir William Constable, one of the king's judges, governor of Gloucester, and colonel of a regiment of foot, who died 1655.

"The body of colonel Edward Popham, one of the admirals of the fleet, who died 1651.

"The body of William Stroud, esq. one of the five members of parliament demanded by king Charles I.

"The body of col. Humphrey Mackworth, one of O. Cromwell's colonels, buried in Henry the 7th's chapel, 1654.

"The body of Dennis Bond, esq. one of the council of state, who died Aug. 8, 1658.

"The body of Tho. May, esq. who writ the History of the Long Parliament with great integrity, and in a beautiful stile. He died in the year 1650.

"The body of colonel John Meldrum, a Scots man, who died in the wars.

"The body of colonel Boscawen, a Cornish man.

"To these may be added, several eminent Presbyterian divines; as,

"The body of Dr. William Twiss, prolocutor of the Assembly of Divines, buried in the South-cross of the abbey church, July 24, 1645.

"The body of Mr. Stephen Marshall, buried in the South isle, Nov. 23, 1655.

"The body of Mr. William Strong, preacher in the abbey church, and buried there July 4, 1654. These, with some others of lesser note, both men and women, were thrown together into one pit in St. Margaret's church-yard, near the back-door of one of the prebendaries: but the work was so indecent, and carried with it such a popular odium, that a stop was put to any further proceedings." 4 Neal's History of the Puritans, 290.

‘such confidants, in the time of the Usurper’s sickness, desire to know, where he would be buried; to which he answered, Where he obtained the greatest victory and glory, and as nigh the spot as could be guessed, where the heat of the action was, viz. in the field at Naseby, Com. Northampton; which accordingly was thus performed: At midnight (soon after his death) being first embalmed in a leaden coffin, the body was in a hearse conveyed to the said field, the said Mr. Barkstead by order of his father, attending close to the hearse, and being come to the field, they found about the midst of it a grave dug about nine feet deep, with the green sod carefully laid on one side, and the mould on the other, in which the coffin being soon put, the grave was instantly filled up, and the green sod laid exactly flat upon it, care being taken that the surplus mould was clean taken away. Soon after like care was taken, that the said field was entirely ploughed up, and sown three or four years successively with corn. Several other material circumstances the said Mr. Barkstead (who now frequents Richard’s coffee-house within Temple Bar) relates (too long to be here inserted) and particularly after the Restoration his conference with the late witty Duke of Buckingham.”

And in the 2d volume of the Harleian Miscellany, p. 269 (edition of 1741), the following account is given:

An Account of the Burial of King CHARLES the FIRST, and of OLIVER CROMWELL. In which it appears, how Oliver’s Friends contrived to secure his Body from future disgrace, and to expose the Corpse of King Charles to be substituted in the punishment and ignominy designed for the Usurper’s Body. MS.

“Amongst other Papers, the following MS. was carefully preserved by my lord Oxford. It contains an extract from the Journal of the House of Commons; which honourable house, resolving to disgrace the name of the late usurper Oliver Cromwell, as far as lay in their power, ordered his body to be taken up, and to be first hanged on the gallows at Tyburn, and then to be burnt.

“This order was passed by the Serjeant of that honourable house so far, as to find a coffin with Oliver’s name, and usurped titles, at the east-end of the middle isle of Henry the Seventh’s chapel, in Westminster-abbey.

“This, with an account where the said inscription is, or was, within a few years ago, to be seen, is written in a very fair hand.

“Then in two different hands, there follows the most remarkable account of a counter-interment of the arch-traitor, as well as the reason and contrivance to secure his body from that expected ignominy, and to continue the revenge of king Charles’s enemies, even to the disgrace of substituting the body of the beheaded king, in the punishment intended by a

justly enraged people, upon the dead body of the usurper.

“Soon after the Restoration, the then Serjeant of the House of Commons, was ordered, by the house, to go with his officers to St. Peter’s, Westminster, and demand the body of Oliver Cromwell, buried there, to be taken up, in order to be disposed in the manner the house should adjudge fitting.—Whereupon the said Serjeant went, and, in the middle isle of Henry the Seventh’s Chapel, at the east-end, upon taking up the pavement, in a vault, was found his corpse; in the inside of whose coffin, and upon the breast of the corpse, was laid a copper-plate, finely gilt, enclosed in a thin case of lead, on the one side whereof, were engraved the arms of England, impaled with the arms of Oliver; and, on the reverse, the following legend, viz.

“*‘Olivarius Protector Reipublicæ Angliæ, Scotiæ, et Hiberniæ, Natus 25 April, 1599, Inauguratus 16 Dec. 1653, Mortuus 3 Sept. anno 1658, hic situs est.’*

“The said Serjeant, believing the plate to be gold, took it pretendedly as his fee; and Mr. Gifford, of Colchester, who married the Serjeant’s daughter, has now the plate, which, his father-in-law told him, he came by in the manner above related.

“A Counter-Interment of the aforesaid Arch-Traitor, as averred, and ready to be deposed, if occasion required, by Mr. ——— Barkstead, who daily frequents Richard’s Coffee-house, within Temple Bar, being son to Barkstead, the Regicide, that was executed as such, soon after the Restoration, the son being, at the time of the said Arch-Traitor’s death, about the age of 15.

“That the said Regicide Barkstead, being Lieutenant of the Tower of London, and a great confidant of the Usurper, did, among other such confidants, in the time of the Usurper’s sickness, desire to know where he would be buried: To which he answered, Where he had obtained the greatest victory and glory, and as nigh the spot as could be guessed, where the heat of the action was, viz. in the field at Naseby, county Northampton; which accordingly was thus performed: At midnight (soon after his death) being first embalmed, and wrapped in a leaden coffin, he was in a hearse, conveyed to the said field, the said Mr. Barkstead, by order of his father, attending close to the hearse; and, being come to the field, there found, about the midst of it, a grave, dug about nine feet deep, with the green sod carefully laid on one side, and the mould on the other; in which, the coffin being soon put, the grave was instantly filled up, and the green sod laid exactly flat upon it, care being taken, that the surplus mould was clean taken away.

“Soon after, like care was taken, that the said field was intirely ploughed up, and sown three or four years successively with wheat.

“Several other material circumstances, relat-



ing to the said interment, the said Mr. Barkstead relates (too long to be here inserted) and, particularly, after the Restoration, his conference with the late (witty) duke of Buckingham, &c.

"Talking over this account of Barkstead's, with the Reverend Mr. Sm—, of Q—, whose father had long resided in Florence, as a merchant, and afterwards as minister from king Charles the Second, and had been well acquainted with the fugitives after the Restoration; he assured me, he had often heard the said account by other hands: Those miscreants always boasting, that they had wrecked their revenge against the father, as far as human foresight could carry it, by beheading him, whilst living, and making his best friends the executors of the utmost ignominies upon him, when dead. Asking him the particular meaning of the last sentence, he said, that Oliver, and his friends, apprehending the Restoration of the Stuart family, and that all imaginable disgrace, on that turn, would be put upon his body, as well as memory; he contrived his own burial, as averred by Barkstead, having all the theatrical honours of a pompous funeral paid to an empty coffin, into which, afterwards, was removed the corpse of the martyr (which, by lord Clarendon's own account, had never truly, or certainly, been interred; and, after the Restoration, when most diligently sought after, by the earls of Southampton and Lindsey, at the command of king Charles the Second, in order to a solemn removal, could no where, in the church where he was said to have been buried, be found) that, if any sentence should be pronounced, as upon his body, it might effectually fall upon that of the king. That, on that order of the Commons, in king Charles the Second's time, the tomb was broken down, and the body taken out of a coffin so inscribed, as mentioned in the Serjeant's report, was from thence conveyed to Tyburn, and, to the utmost joy and triumph of that crew of miscreants, hung publicly on the gallows, amidst an infinite croud of spectators, almost infected with the noisomeness of the stench. The secret being only amongst that abandoned few, there was no doubt in the rest of the people, but the bodies, so exposed, were the bodies they were said to be; had not some, whose curiosity had brought them nearer to the tree, observed, with horror, the remains of a countenance they little had expected there; and that, on tying the cord, there was a strong seam about the neck, by which the head had been, as was supposed, immediately after the decollation, fastened again to the body. This being whispered about, and the numbers that came to the dismal sight hourly increasing, notice was immediately given of the suspicion to the attending officer, who dispatched a messenger to court, to acquaint them with the rumour, and the ill consequences the spreading or examining into it further, might have. On which the bodies were immediately ordered down, to be buried again, to prevent any infection. Certain is it, they were not burnt, as in prudence, for that pretended rea-

son, might have been expected; as well as in justice, to have shewn the utmost detestation for their crimes, and the most lasting mark of infamy they could inflict upon them. This was the account he gave. What truth there is in it, is not so certain. Many circumstances make the surmise not altogether improbable: As all those enthusiasts, to the last moment of their lives, ever gloried in the truth of it."

It must be confessed that what lord Clarendon says concerning the corpse of Charles the 1st, gives some countenance to these stories. Lord Clarendon's account is as follows:

"His body was immediately carried into a room at Whitehall; where he was exposed for many days to the public view, that all men might know that he was not alive. And he was then embalmed, and put into a coffin, and so carried to St. James's, where he likewise remained several days. They who were qualified to order his funeral, declared, 'that he should be buried at Windsor in a decent manner, provided that the whole expence should not exceed 500*l*.' The duke of Richmond, the marquis of Hertford, the earls of Southampton and Lindsey, who had been of his bed-chamber, and always very faithful to him, desired those that governed, 'that they might have leave to perform the last duty to their dead master, and to wait upon him to his grave,' which, after some pauses, they were permitted to do, with this, 'that they should not attend the corpse out of the town; since they resolved it should be privately carried to Windsor without pomp or noise, and then they should have timely notice, that if they pleased, they might be at his interment.' And accordingly it was committed to four of those servants who had been by them appointed to wait upon him during his imprisonment, that they should convey the body to Windsor, which they did. And it was, that night, placed in that chamber which had usually been his bed-chamber: the next morning, it was carried into the great hall; where it remained till the lords came; who arrived there in the afternoon, and immediately went to colonel Whitecot, the governor of the castle, and shewed the order they had from the parliament to be present at the burial; which he admitted; but when they desired that his majesty might be buried according to the form of the 'Common Prayer book, the bishop of London being present with them to officiate, he positively and roughly refused to consent to it; and said, 'it was not lawful; that the Common-Prayer book was put down, and he would not suffer it to be used in that garrison where he commanded;' nor could all the reasons, persuasions, and intreaties, prevail with him to suffer it. Then they went into the church to make choice of a place for burial. But when they entered into it, which they had been so well acquainted with, they found it so altered and transformed, all inscriptions, and those land-marks pulled down, by which all men knew every particular place in that church,

and such a dismal mutation over the whole, that they knew not where they were; nor was there one old officer that had belonged to it, or knew where our princes had used to be interred. At last there was a fellow of the town who undertook to tell them the place, where he said, 'there was a vault, in which king Henry the 8th and queen Jane Seymour were interred.' As near that place as could conveniently be, they caused the grave to be made. There the king's body was laid without any words, or other ceremonies than the tears and sighs of the few beholders. Upon the coffin was a plate of silver fixt with these words only, 'King Charles 1648.' When the coffin was put in, the black velvet pall that had covered it was thrown over it, and then the earth thrown in; which the governor stayed to see perfectly done, and then took the keys of the church.

"I have been the longer, and the more particular in this relation, that I may from thence take occasion to mention what fell out long after, and which administered a subject of much discourse; in which, according to the several humours and fancies of men, they who were in nearest credit and trust about the king, underwent many very severe censures and reproaches, not without reflection upon the king himself. Upon the return of king Charles the 2d with so much congratulation, and universal joy of the people, above ten years after the murder of his father, it was generally expected that the body should be removed from that obscure burial, and, with such ceremony as should be thought fit, should be solemnly deposited with his royal ancestors in king Henry the 7th's chapel in the collegiate church of Westminster. And the king himself intended nothing more, and spoke often of it, as if it were only deferred till some circumstances and ceremonies in the doing it might be adjusted. But, by degrees, the discourse of it was diminished, as if it were totally laid aside upon some reasons of state, the ground whereof several men guessed at according to their fancies, and thereupon cast those reproaches upon the statesmen as they thought reasonable, when the reasons which were suggested by their own imaginations, did not satisfy their understanding. For the satisfaction and information of all men, I choose in this place to explain that matter; which it may be is not known to many; and at that time was not, for many reasons, thought fit to be published. The duke of Richmond was dead before the king returned; the Marquis of Hertford died in a short time after, and was seldom out of his lodging after his majesty came to Whitehall: the earl of Southampton and the earl of Lindsey went to Windsor, and took with them such of their own servants as had attended them in that service, and as many others as they remembered had been then present, and were still alive; who all amounted to a small number; there being, at the time of the interment, great strictness used in admitting any to be present whose names were not included in the order which

the lords had brought. In a word, the confusion they had at that time observed to be in that church, and the small alterations which were begun to be made towards decency, so totally perplexed their memories that they could not satisfy themselves in what place, or part of the church the royal body was interred: Yet, where any concurred upon this, or that place, they caused the ground to be opened at a good distance, and, upon such enquiries, found no cause to believe that they were near the place: and, upon their giving this account to the king, the thought of that remove was laid aside, and the reason communicated to very few, for the better discountenancing further enquiry."

Upon this passage Kennett observes: "It has been made a question and a wonder by some persons, why a monument was not erected for him after the restoration of his son, when the commons were well inclined to have given a sum of money for that grateful purpose. We are afraid, the true reason was, that the royal body could not be found; those who murdered it had disturbed it in the very grave, and had carried it away, and God alone knows whether they gave it any second interment."

Milton, in his "*Defensio Secunda pro Populo Anglicano*," has left a masterly representation of Bradshaw; and lord Clarendon says something of him. The contrast, with respect to facts as well as sentiments, between the two accounts, gives additional interest to the dignified and splendid eloquence of Milton. Lord Clarendon, speaking of the constitution of the High Court of Justice for the Trial of King Charles the First, says, "They were to make choice of a Speaker or Prolocutor, who should be called Lord President of that High Court, who must manage and govern all the proceedings there, ask the witnesses all proper questions, and answer what the prisoner should propose. And to that office one Bradshaw was chosen, a lawyer of Grays-Inn, not much known in Westminster-hall, though of good practice in his chamber, and much employed by the factious. He was a gentleman of an ancient family in Cheshire and Lancashire, but of a fortune of his own making. He was not without parts, and of great insolence and ambition. When he was first nominated, he seemed much surprised, and very resolute to refuse it; which he did in such a manner, and so much enlarging upon his own want of abilities to undergo so important a charge, that it was very evident he had expected to be put to that apology. And when he was pressed with more importunity than could have been used by chance, he required 'time to consider of it;' and said, 'he would then give his final answer;' which he did the next day; and with great humility accepted the office, which he administered with all the pride, impudence, and superciliousness imaginable. He was presently invested in great state, and many officers, and a guard assigned for the security of his person, and the dean's house at

Westminster given to him for ever for his residence and habitation, and a good sum of money, about 5,000*l.* was appointed to be presently paid to him, to put himself in such an equipage and way of living, as the dignity of the office which he held would require. And now, the Lord President of the High Court of Justice, seemed to be the greatest magistrate in England. And though it was not thought seasonable to make any such declaration, yet some of those whose opinions grew quickly into ordinances, upon several occasions, declared, 'That they believed that office was not to be looked upon as necessary *pro hac vice* only, but for a continuance; and that he who executed it, deserved to have an ample and a liberal estate conferred upon him for ever:' which sudden mutation and exaltation of fortune, could not but make a great impression upon a vulgar spirit, accustomed to no excesses, and acquainted only with a very moderate fortune."

The Poet writes thus: "Est Joannes Bradscianus (quod nomen libertas ipsa, quæcunque gentium colitur, memoriam æmpternæ celebrandum commendavit) nobili familiâ, ut satis notum est, ortus; unde patrii legibus addiscendis primam omnem ætatem sedulo impendit: dein consultissimus causarum et disertissimus patronus, libertatis et populi vindex acerrimus, et magnis reipublicæ negotiis est adhibitus, et in corrupti judicis munere aliquoties perfunctus. Tandem uti Regis judicio presidere vellet a senatu rogatus, provinciam sanè periculosissimam non recusavit. Attulerat enim ad legum scientiam ingenium liberale, animum excelsum, mores integros ac nemini obnoxios; unde illud munus, omni propè exemplo majus ac formidabilius, tot sicariorum pugionibus ac minis petitus, ita constanter, ita graviter, tantâ animi cum præsentia ac dignitate gessit atque implevit, ut ad hoc ipsum opus, quod jam olim Deus edendum in hoc populo mirabili providentiâ decreverat, ab ipso numine designatus atque factus videretur; et tyrannicidarum omnium gloriam tantum superaverit, quantum est humanius, quanto justius ac majestate plenius tyrannum judicare, quàm injudicatum occidere. Alioqui nec tristes nec severus sed comis et placidus. personam tamen quam suscepit tantam, æqualis ubique sibi ac veluti consul non unus anni, pari gravitate sustinet: ut non de tribunali tantum, sed per omnem vitam judicare regem diceret. In consiliis et laboribus publicis maxime omnium indefessus multique par unus domi, si quis alius, pro suis facultatibus hospitalis ac splendidus, amicus longè fidelissimus atque in omni fortunâ certissimus, bene merentes quoscunque nemo citius aut libentius agnoscit, neque majore benevolentia prosequitur; nunc pios, nunc doctos, aut quâvis ingeni laude cognitos, nunc militares etiâ et fortes viros ad inopiam reductos suis opibus sublevat; iis si non indigent, colit tamèn libens et amplectitur: alienas laudes perpetuò prædicare, suas tacere solitus; hostium quoque civilium siquis ad sanitatem rediit, quod experti sunt plurimi, ne-

VOL. V.

mo ignoscentior. Quod si causa oppressi cunjuspiam defendenda palàm, si gratia aut vis potentiorum oppugnanda, si in quemquam bene meritum ingratitude publica objurganda sit, tum quidè in illo viro vel facundiam vel constantiam nemo desideret, non patronum, non amicum, vel idoneum magis et intrepidum, vel disertiorè alium quisquam sibi optet; habet quem non minè dimovere recto, non metus aut munera proposito bono atque officio, vultusque ac mentis firmissimo statu dejicere valeant."

Whitelocke, as we have seen, *ante*, vol. 4, p. 1128, pithily denominates Bradshaw "No friend to Monarchy." On the same occasion he says of him, that "he was a stout man, and learned in his profession." In another place, under date March 20th 1649, Whitelocke speaks of him as spending in the Council of State much time in urging "long arguments, which are inconvenient in state matters, his part being only to gather the sense of the Council, and to state the question, not to deliver his own opinion." Ludlow records some instances of Bradshaw's stoutness, one of which may be seen in a note to Streeter's Case, *ante*, p. 366.

"Sir John Bourchier, who had been one of the king's judges, and had rendered himself within the time limited by the proclamation, being of a great age, and very infirm, was permitted to lodge at a private house belonging to one of his daughters. In this place he was seized with so dangerous a fit of illness, that those about him, who were his nearest relations, despairing of his recovery, and presuming, that an acknowledgment from him of his sorrow for the part he had in the condemnation of the king, might tend to procure some favour to them from those in power, they earnestly pressed him to give them that satisfaction. But he being highly displeased with their request, rose suddenly from his chair, which for some days he had not been able to do without assistance; and, receiving fresh vigour from the memory of that action, said, 'I tell you, it was a just act. God, and all good men, will own it.' And, having thus expressed himself, he sat down again, and soon after quietly ended his life." 3 Ludlow, 33.

Upon this occasion was published the following Argument, in favour of the Prisoners in the Tower:

#### 'THE ' TRAITORS' CLAIM.

Or, A Clear and Impartial Consideration of 'the SECTARY as to LIFE, claimed by the ' CONDEMNED TRAITORS now Prisoners in ' the Tower of London, who rendered themselves, according to his Majesty's Proclamation of the 6th of June, 1660, by advice ' of the Lords and Commons, then assembled in Parliament.—In a Letter written ' August 20, 1661, to a Honourable Member of the House of Commons, now sitting ' in Parliament.

4 R

‘ 1 Kings ii. 36, 37. And the King sent and called Shimci, and said unto him, Build thee a house in Jerusalem, and go not forth from thence any whither : for it shall be on that day, when thou goest out, and passest over the Brook Kidron, thou shalt know for certain, thou shalt surely die; thy blood shall be upon thine own head.

‘ Prov. xx. 28. Mercy and Truth preserves the King. and his Throne is established by Mercy.

‘ Justin. Spectandum, an in conventione fidem Medorum elegerint.’

“Honoured Sir; At your return into the country, I received yours of the 10th instant, which signified your serious debates, and union in Parliament, in the matters which concern this Church and State. For this I thank you, and in this I rejoice with you.

“In your letter you are pleased to put on me a task, which you, knowing me so well, cannot but know, must needs be unpleasant to me, viz. To consider the Case of the Condemned Traitors now in the Tower, waiting for Execution; and impartially to communicate to you my thoughts, concerning the Security as to their Lives, which they challenge, and some on their behalfs plead; the Question you have thus stated :

“Whether the Condemned Traitors, who rendered themselves according to the Proclamation of his Majesty, and on trial stand Condemned, may with Justice, and Honour to the King and Kingdom, be Executed upon a Bill or Act of Parliament to be past for that purpose?”

“Sir, I do not a little wonder you should charge this work on me, who indeed am yours to my power, but at such enmity with all agents in that barbarous murder of our late king of glorious memory, that I could with Tertullus accuse them, better than with Gamaliel make the least apology, though never so rational for the security of any one of them; how often have I imprecated God’s vengeance on them? and attended the healths drunk to their confusion; triumphed in their conviction and condemnation; and fretted at the reprieves of their execution? Must I now by your command be constrained to appear advocate for their blood, which spilt many years since might have prevented the spilling much gallant, noble, English blood? yea, and what is ten thousand times more precious, the royal blood of the only protestant king and prince.

“And really Sir, I should adventure a denial of your demands, your desire being so contrary to my judgment, were I not awed into a compliance, by the transcendent splendour of his majesty’s clemency, conjuring down the spirit of revenge, and all vindictive thoughts raised by the late rebellion; but, presuming your enquiry to spring from the same principle, I dare not but endeavour your resolution.

“Sir, I must in this undertaking enquire, in

what sense you understand the term Justice? If strictly and properly as opposed to Wrong. Who knows not that a parliament, which may dispose of all our lives at pleasure, may justly execute those, whom the law, by a judicial and regular process, hath condemned? But forasmuch as *summum jus*, warranted by our laws, may seem, *Jure Civili*, to be *summa injuria*; as it was in the case of the renowned Tho. Cromwell, concerning whose attainder by parliament, a judicious lawyer [lord Coke] hath advised, ‘auscrat, oblitio si pētest, si non utcunque si lautum tegat,’ I must conceive by justice you mean equity, the bridle of *summum jus*, or truth opposed unto breach of faith; your concomitant honour is my conduit to this interpretation, and your query is,

“Whether the Condemned Prisoners, who rendered themselves upon the Proclamation of his Majesty, published by the advice of his Parliament, being on Trial Convict, and Condemned, may with Equity, Truth, and Honour in King and Parliament, be Executed, on a Bill passed for that purpose?”

“Sir, the resolve (my judgment on deliberate thoughts doth compel me to give) to this query, is negative, so repugnant to my former fervour, and expressed desire, that I am reduced to the strait of the lord Digby in the Case of the late unhappy earl of Strafford, and must express it in his words, ‘I am still the same in mine opinions and affections to the Earl; I confidently believe him (them) the most dangerous minister of state, the most unsupportable to free subjects that can be characterized; I believe his (their) practices in themselves as high as ever subject ventured on; I believe him (them) the grand apostate to the Commonwealth, who must not expect to be pardoned it, in this, till dispatched into another world; And yet let me tell you, Sir, my hand must not be to that dispatch; I protest as my conscience stands informed, I had rather it were off.’

“Verily Sir, though these men’s crime is more obvious and notorious, I humbly conceive, the reasons which supersede their execution, are more weighty than were or could be by any pleaded in the case of that honourable person, whose quality and singularity, with the popular out-cry, might, had his conviction been just and clear, have necessitated his execution, who had no security for his life save his prince’s favour; whilst our condemned prisoners cling close to the faith and honour of their sovereign, to keep them from the gallows; which, Sir, I must, in sobriety and plainness tell you, if right reason must direct their execution, will prevent their being turned off the ladder, though they were tied up to the tree; and cause them to be led back to prison, to be otherwise disposed at his majesty’s pleasure. But to come to the pinch of the case, and crisis of the query.

"I read, Sir, in Justin's History, the Medes (the empire not yet obtained) made certain cities tributary, and conceded to them immunities and liberties, larger than the empire would allow; which once possessed, it was disputed, 'Whether in Justice and Honour the former indulged Privileges must be maintained.' To resolve which, this rule was dictated, 'Spec-tandum est, an in Conventione fidem Medorum elegissent.' It is to be considered, Whether they chose, confided in the faith of the Medes.

"Sir, the public faith of any people and nation is the most sacred and inviolable security that can be given; as the only bond of human society, in so much that the chosen, confided in sense thereof, beyond the intent of the persons plighting or the strict constructions of the words, must be maintained and oblige; as is evident in the case of the Gibeonites, on which a late prelate of our church doth comment; 'Joshua might have taken advantage of their own words, and have said, you are come from a far country, these cities are near, these are not therefore the people to whom we are engaged; Israel had put in a direct caveat against vicinity; Joshua's heart was far from making a league with a Canaanite.' Bishop Hall's Contemplations, p. 918. Grotius de Jure Belli et Pacis. lib. 2, cap. 13, p. 220. Yet were these Gibeonites, condemned in the directions given by God concerning the Canaanites, secured as to their lives; though not other concerns, and their execution 300 years after by the authority of king Saul, judged a perfidious murder, avenged by the Lord, and only expiated by the blood of the executioner's posterity.

"If, Sir, these have on any probable ground chosen, confided in the faith and honour of our king and kingdom; yet, whatsoever I have said in the heat of revenge, I cannot but, in cool blood, commend the deliberation of his majesty and the parliament, in the weighty matters of mens' lives, and confess, 'Secundæ cogitationes sunt meliores.' For, Sir, being put, by your command, to consider these Traitors' claim, I am constrained to conclude for, and not against their lives; of which they must needs be judged unworthy. The ground of these mens' claim as to the security of their lives, is the Proclamation of his majesty the 6th of June, 1660, by advice of the lords and commons then in parliament assembled, the tenor whereof is thus:

"Whereas Owen Roe, Augustine Garland, Robert Tichbourne, &c. being deeply guilty of that most detestable and bloody treason, in sitting upon, and giving judgment against the life of our royal father; and out of a sense of their own guilt, have lately fled and obscured themselves, whereby they cannot be apprehended and brought to a personal trial for their said treasons, according to law. We do therefore by the advice of our lords and commons in parliament assembled, command, publish and declare, by this our Proclamation,

'That all and every the persons before named, shall within fourteen days next after the publishing of this our royal Proclamation, personally appear, and render themselves to our Speaker, &c. Under pain of being excepted from any pardon or indemnity, both for their respective lives and estates.'

"To this Proclamation these men have conformed, and within the time limited, according to the directions given, they rendered themselves to trial; confiding in the faith and honour of the king on the advice of his lords and commons assembled in parliament, as their security to escape the penalty, so as not to be excepted from all pardon; but that their estates being taken, their lives (being the all left them, and liable to execution) they doubt not, the grace of this Proclamation intended to preserve, to run out their course in nature.

"It must, Sir, be granted, this proclamation containeth no positive express terms, which might fully speak the intention of his majesty, and his parliament, towards the lives of these miscreants, and give an absolute indisputable security for them; nor indeed is this the question; for this granted, voideth not their claim; which is only this, 'Fidem Anglorum in conventione elegimus,' we chose, confided in England's faith, in the proclamation of the king on advice of parliament.

"Sir, all civilians determine, the words of any covenant to bind in that sense which they understand and believe who are in them concerned, and to whom the security is by them engaged; otherwise ambiguous terms would fallaciously void all covenants; and truly all human security, this (as I have before noted) was the case of the Gibeonites, beyond the intention and seeming expressions of Joshua and his princes.

"Sir, resolving myself into their condition, to give a faithful and impartial judgment (without passion or prejudice) on these men's claim; I humbly conceive there are many considerable things; which concur and constitute this royal Proclamation a full moral security for their lives, viz.

"First, the Proclamation is penned in a stile of clemency, and the words bear to these men a most favourable aspect, being varied from the expressions usual in a mere summons to judgment. For

"1. It complains they were fled, obscured themselves, whereby they could not be apprehended and brought to a personal and legal trial; (not that they had escaped from justice, the proper plant of a mere summons) as if their conviction and condemnation were all intended, whereupon they are required to appear and render themselves to trial (not to justice) for this Proclamation can expect no answer beyond what it chargeth.

"2. The Proclamation is *sub pœna*, under pain of being excepted from pardon, saith the title any pardon both for life and estate, saith the body of it, with terms of discrimination, implying the one being accepted, the other might be

avoided on due personal appearance. Seeing to be drawn, hanged, and quartered, was the due pain assigned by the law for their offence and treason, exception from pardon was a new pain, on the new offence of their latency and escape from trial, which if it imply not an immunity on their appearance, I must confess I am to seek what it signifieth, or intended to express; and the speech of king and parliament must not be, 'vox et preterea nihil,' insignificant.

"Sir, so rational is this ground of claim, made by these condemned persons, that the whole parliament have on serious and mature debates (without once hearing these delinquent's pleas) in a full formal act of parliament declared, 'That there were some conceived doubtful words in the said Proclamation; upon which the persons who rendered themselves, and appeared according as was directed, did pretend to some favour.' Now Sir, who knoweth not that the doubtful terms of any law must be expounded in favour to the Delinquent, 'Favores sunt amphandi.'

"Sir, the terms in this Proclamation propound a new pain, on a new offence, corrigible within 14 days; and plainly imply some favour, and an immunity from, and avoidance of the pain; but to have their lives spared, is the least of favours which can be employed, expected or pretended unto, by the conceived doubtful words, which bear a favourable sound and aspect, and so clearly engage a public faith for the security of their miserable life.

"Secondly, 'Lex curit cum praxi,' the concomitants of this Proclamation make the public faith a security for these men's lives much more legible, by spelling and putting together these several observations.

"1. His majesty's royal Declaration (in the time of his unjust exile) ever excepted out of the general pardon by him graciously offered, only some few (not all) of the chief authors (not secondary instruments) of the murder of his royal father,\* importing grace to be extended to others under the same strict and general guilt; and to whom if not to these?

"2. These few were referred to the Exception of parliament; yea of that adopted parliament, in respect of which these men are denominated the Parliament's Prisoners; concerning whom I have been informed his majesty would never yet order one particular circumstance.

"3. The commons in this parliament, with his majesty's knowledge and consent (as it hath been reported) did vote 'seven and no more' of the men of this capacity, to be wholly excepted from mercy, both to life and estate.

"4. Considering many did obscure themselves, so as that their conviction (desirable as to the justice and honour of the nation) could not be effected, the lords and commons advised, and on their advice his majesty published this Pro-

clamation for their personal appearance to trial only, and that on pain of being excepted from any pardon, (the business then under consideration of parliament) they having in their hands such chief authors of the king's death, who were most obnoxious to guilt, and proper objects for severity of justice.

"5. These persons then latent, securing their own lives, hearing of this Proclamation did, (notwithstanding the sense of the vulgar, that appearance would secure their lives,) demur to their appearance; until their friends, (assured by many honourable members of parliament, who best understood the Proclamation) advised, that Indemnity to Life was intended to such as should appear as was directed; in confidence whereof (waiving other means for their preservation, within their own power) they appeared, rendered themselves in time and manner advised; putting their lives under the protection of the public faith, the most certain security which could be imagined.

"6. John Dixwell, and some others of this confederacy, incapable by sickness, or late intelligence, of appearing within the time limited, petitioned the parliament for some few days more, in which to appear; but the grace of this proclamation was denied to be extended one day longer, which sure was some grace, to such as in time conformed to it.

"7. The house of commons (principally concerned, chief and first advisers of this gracious Proclamation) having determined the number of persons to be made examples of dread, and undergo the utmost of the law, engrossed, passed, and transmitted to the lords, the bill for indemnity with a full and express pardon as to these men's lives; to which the lords demurred, yet the commons in three several conferences, asserted the public faith and honour engaged by this proclamation; (which was acutely and solidly argued by sir Heneage Finch his majesty's solicitor general, and sir William Wild recorder of London, and other honourable members managing that conference;) and being resolved never to break the same, and thereby suggest to the world, the Proclamation was advised as a plausible (not to say perfidious) decoy to flying birds: at last yielded to pass the act, with a proviso, they not to be executed when condemned, without an act of parliament or bill to be passed for that purpose; which they resolved should never be by that parliament, and it was more than probable, would never be by another, simple execution being too odious for their debates, and determinations, and the security by the Proclamation given, being by these debates made so legible, that all men might run and read, these men could not suffer without high scandal, if not open violence, unto the public faith of the kingdom.

"8. Every of these men (well documented by the parliament's debates and declaration in the act of indemnity) did on their arraignment, convict themselves, and in open court plead the Proclamation, (as the benefit of clergy)

\* Declaration from Dumfermling 16th Aug. 1650. See p. 962. Declaration from Breda 14th April 1660. See p. 951.

which was admitted; and so far declared by sir Orlando Bridgman lord chief justice in that commission; that the spectators (most fit and proper expositors in all judicial proceedings, which hath ever caused courts of judicature to be open) did understand, and conclude, though these men were condemned, yet their lives were secured unto them.

"If sir, these eight considerations being put together, do not spell this octo-syllabon, *Public-faith-securing-their-lives*, as a thing legible to them and all sober men resolved into their case, to be rationally chosen, concluded and confided in, I must go again to school to learn my A. B. C. and will advise Baxter, Coffey, Whaley and others not trusting to the Proclamation, but securing their own lives, to write over every gate, under every quarter of these men, when executed, 'credulous fools'; and Dixwell and his fellow petitioners to write over the door of the house of commons, who admitted not their surrendering themselves, 'blessed severity': the condition of these men by confidence of grace being rendered worse than theirs that fled from it.

"But some zealous and royal hearts, grudging the least grace to such regicides, will object (that with which I have this long time passionately deceived myself and others) and say, so, you dis-couse of the nature of a covenant, and plead for these miscreants lives, as if his majesty and the parliament had passed with them a formal and positive contract; whereas the Proclamation is a bare summons for such (who in conscience of their guilt) were fled, and obscured, that they appear and abide the trial of the law, which was their duty, without being directed by this Proclamation. To such I crave leave to answer. I grant the Proclamation is a summons, to what was duty without it, nor can they deny it is *sub-pena* which must necessarily imply a condition whereby the pain may be voided, otherwise it is in vain expressed.

"Sir, Civilian tell us of a 'Pactum vetans' a covenant of prohibition used in human society, and declare 'pactum vetans magis vincit jubentem, quam positive jubens?' it more strongly obligeth the superior, than a positive precept; All summons is a covenant of this nature, and therefore most sacred and inviolable; so as that a cessation from the thing forbidden, must necessarily void the penalty. Nature teacheth the mother, with a rod in her hand, to call in the wild wanton child, on pain of being whipt, if overtaken and fetched in; the child confiding in her words, returneth with speed and escapeth the correction; the general to summon a garrison to be yielded, within 24 hours, on pain of burning to the town, and slaughter to every man; they yield to the summons, and are saved: our law directs a Proclamation on pain of an out-law, the defendant appeareth, and hath liberty of plea. His late majesty (as do all princes in like case) summoned such as followed the earl of Essex to lay down their arms, and repair to their houses within six

days, on pain of being judged Rebels and Traitors; some accordingly returned and avoided the penalty; in these and the like cases the penalty could not be inflicted without barbarous breach of faith and high dishonour.

"The nature, usage, and obligation of a 'pactum vetans,' is commended by many examples in Holy Writ, as Joab's summons of the city of Abell to render rebellious Sheba to justice, on pain of being sacked: And Solomon's confinement of Abiathar to his city Anathoth, and Shimei to his house on pain of death; Abell did escape by the head of Sheba, nor had Shimei died had he kept within his bounds as did Abiathar.

"This Proclamation is a summons of duty but *sub pena*; and so a covenant though 'vetans,' to the future latency of these men; the nature of the pain is their advantage: had it been (what is usual in cases of this nature) a summons to appear on pain of being concluded guilty, and to suffer without mercy; their appearance had secured to them a due and fair trial, in which to plead for their lives; but the pain of being excepted from pardon both for life and estate must needs secure them the one; otherwise what is the pain to be avoided by obedience to the prohibition?

"This 'pactum vetans' is so natural to men, so suitable to sovereign majesty, a security so sacred and inviolably obliging in human society, that God himself maketh it his first transaction with his creature man; In the day thou eatest thereof thou shalt die the death, was the form and tenor of the first covenant; will any man deny the same to assure life on the condition of the prescribed abstinence from the forbidden fruit?

"Civilians render three, I shall make them four, reasons why a 'pactum vetans,' a covenant of prohibition, should more firmly oblige the prescriber, than a positive precept, and more express covenant; every of these reasons concur, in our Traitors' case, to corroborate their clamour:

"1. The matter thereby prohibited is special, not general, [obscure not yourselves from a legal trial,] and their rule is, 'peculiare et quod ad rem propriam accedit, magis obligat quam generale,' what is special, and cometh nearest the matter, doth more bind, than what is general and more remote.

"2. The time in such covenants is limited, which being slipt, they may sit down and sing that Cyrene song, 'Fronte capillata post est occasio calva.' Oh that we had known in that our day the things which concerned our peace, but are now hid from our eyes. [Appear and render yourselves within fourteen days.] Hence Dixwell and his fellow petitioners, could not procure one day, to the grace exhibited in the proclamation; the rule is 'quod faciendum est certo tempore, magis obligat quam quod quovis temporis fieri potest;' what is to be done in a certain time, bindeth more, than what is to be done at any time.

"3. This kind of covenant usually passeth *sub pœna*; implying immunity and escape; [on pain of being excepted from any pardon both for life and estate] the rule is ('quod pœnam adjunctam habet, magis obligat quam quod pœna vacat,' a prohibition with penalty binds more than that without; they could be but drawn out of their dens to Tyburn, if they had not appeared according to the Proclamation.

"4. The condition of the 'pactum vetans' is prescribed, not capitulated, imposed by majesty and authority, condescending to mitigate severity, and release rigour; leaving the 'liberum arbitrium' of the men concerned, to this bare choice, come and appear within fourteen days, or be excepted from any pardon both for life and estate: (more than which cannot befall those that are fled, and refused to appear) and this rule cannot be denied 'authoritate præscripta, magis obligant quam capitulata;' terms imposed by authority do more strictly bind, than terms capitulated upon a fair and equal treaty.

"Sir, on the serious consideration of these men's claim, I see not how it can be denied, they have the public faith of the kingdom engaged for their lives; the violation whereof must be greatly dishonourable to the king and parliament; yea, though by a bill to be passed for their execution; which I humbly conceive is below a parliament; who may, with more justice and honour, by their legislative power, on politic and prudent grounds, take away the life of one whom the law cannot convict and condemn, than direct the execution of them over whom the law had full power, until barred by the force of public faith, rationally claimed to supersede this last act.

To pretend they were not a parliament, who give this security, according to the strictness of our law, and nation's constitution, will not make an objection of any strength: For

"1. The question is not about an ordinary process in our law: but a transaction purely determinable by the civil law; the rules of common justice and honour among men.

"2. They were a full and free convention, and collective body of the kingdom, capable to represent the nation, and engage the faith thereof, though convened by a defective erroneous writ; through the necessity of the times, and estate of the kingdom.

"3. They were the first free parliament, the fruit of all the convulsions and commotions occasioned by our desired liberty, and we were to be ruled, and in all cases resolved by our own reasons, declared by representatives of our own choice.

"4. They were his majesty's parliament, convened for his sake, to his happy and honourable return; (by which our land hath been revived) legitimated by his adoption, annuated by his presence, and corroborated by his concurrence; pardon being the eminent and indisputable prerogative of his imperial crown: whose royal faith hereby engaged, inviolably secureth some grace to these poor wretches.

"These things do evidence that parliament to have been sufficiently capacitated to give an assurance by public faith; which cannot be avoided by defect of a punctilio, or circumstance peculiar to our law; but doth so strengthen these prisoners gates and bars, that I cannot but profess, I see not how they can ever be drawn to execution, without drawing the guilt and disgrace of cruelty, revenge and perfidy on a faith-keeping prince and parliament, though by a bill to be passed for that purpose.

"Honoured Sir, did these traitors want this claim, or their cause want reason, yet common prudence, and the honour of his majesty's clemency now seemeth to me to be a considerable supersedeas to the execution of them: For, Sir,

"1. The splendor of his majesty's clemency (the *res esse* say the Grecians, the honour of a just man say the Romans) being much clouded by the universality of the object, many singulars thinking they needed no act of grace, and some resolved against an act of oblivion) doth sparkle with such orient brightness, by the superseding the execution of these defamed, convicted, condemned individuals: it hereby existing in its full proportion and very formality, (which Favonius thus defines, as Grotius doth thus translate, "ea quæ dicitur clementia apud homines est tempestiva relaxatio summi juris," and I must English, clemency is to save the life of a malefactor tied up to the gallows) that I cannot desire to see it darkened by such an act as revenge may justly provoke, but the vulgar judging by sense will not discern.

"2. The quality of these persons, and their present estate, doth abate the fury conceived against them, they seem to be so weak in their naturals, that their being parliament men (which lead them into temptation) may be almost judged their greatest crime; they appear too simple to have been first imaginers of that horrid regicide, or agitators of that High Court (or to use his majesty's phrase) chief authors of that murder: And then, Sir, they are not the intended objects of the declined expectation from his royal grace and pardon; I cannot without smiling, remember how the poor men's consciences were troubled at the terms, traitorously, maliciously, in their indictment, (on which the solicitor did acutely gloss; My lord, they think they might sentence the king to death, weekly, innocently, charitably and honestly) which certainly did so far bespeak their simplicity, that had our law allowed accessories in treason, judge and jury would have saved them by their clergy: How tremblingly did they beg to wave their plea, (as if run into a premunire, by pleading not guilty) that they might confess and be hanged without this grace interposed? No doubt the court was well pleased with their profound apologies; one pleading, I was young, in infancy, eating sour grapes, not knowing they would set me, much less my children's teeth on edge, another I withstood, gainsaid that wicked sentence, yet



was simply drawn in to sign and seal the same: a third, I looked but over the hedge, I appeared once and again among, and as a member of that wicked pack with an intent to prevent their mischief, against which I got an assembly man to pray with me. Yet, Sir, are these weak men condemned, attainted in blood, their estate confiscated, and by spending their miserable lives in prison, as it were hanged in chains, as mere living monuments, of God and the king's justice (which hath already swallowed up the capital offenders) and were lasting spectacles of dread to future regicides, than their withering quarters are capable of; being a lively comment on Psal. lix. ver. 11. 'Slay not them, lest my people forget it.' For my part I think justice is not more orient by that restraint of clemency, sparing to those men that little which is dearest to them: than by the merciful reserve of such dreadful spectacles for men to behold and consider; insomuch that I could almost envy their very nature, and death itself, which ere long will remove them from a piece of pity, so prudently severe.

3. "The end of punishment must be caution, not revenge; excellent is the saying of Plato, which the serious Seneca thus rendereth, "*nemo prudens punit quia peccatum est sed ne peccetur; revocari enim præterit a non posset, futura prohibentur,*" and again, "*ne homini quidem nocebimus quia peccavit, sed ne peccet, nec unquam ad præteritum, sed ad futurum referetur poena; non enim irascitur sed cavet.*" The God of justice hath prescribed punishment, that others might hear and fear and do no more so wickedly; so far as the execution of the same looketh back, it is revenge, and only punishment by looking forward, at this end it must be leveled, and accordingly squared; '*pœna ad paucos, metus ad omnes,*' is a rule directing all executions; justice is ordinarily satisfied by the execution of a few chief offenders: the cutting off the multitude under the same guilt, is over sanguinary and revengeful; martial law alloweth equal mutiners in an army, the chance of a dice on a drum head, for the single example of their mutiny. Prudent princes ever proclaimed their justice by the execution of a few of the many condemned malefactors; Sheba's head was judged a sufficient sacrifice for the many rebels he had seduced. Our king Henry the 7th made his justice triumph more in Lambert Symonds, turning his spit: and Perkin Warbeck looking through the iron gates; than by the turning the one or the other over the ladder, though both were counterfeit pretenders to the crown, unto bloody and dangerous rebellions: his late martyred majesty charged his son should not revenge (whilst he could not but punish) his death; and his majesty as obedient to the charge, declared to except from all pardon, some few chief authors of that murder, which the commons first computed to be seven, as a sufficient number.

"Sir, These things considered, were not the faith and honour of this kingdom engaged to

secure the lives of those condemned persons; I could not but adore his majesty's clemency in their thus long reprieve, which I now desire may continue; being convinced that such who shall provoke our David to cut off these Shimei's (most wisely confined to their proper places) will be found Abishai's, sons of Zeruiah, too hard, for him, and adversaries to him; who hereby maketh all the world to know he is king of England, graciously holding the sword of justice which justly hangs over, from falling on the neck of these regicides.

"Sir, pardon my plainness and prolixity in this rude discourse, for which if I be called to the bar of the house, for intermeddling with the '*arcana imperii,*' I must plead your command as my commission, and expect your defence of Your most humble and obliged servant, August 20, 1661. PHILOPATER PHILOTOT."

"There was one instance," lord Clarendon tells us, "that perplexed the king, which was the case of colonel Ingoldsby; who was in the number of the late king's judges, and whose name was in the warrant for his murder. He, from the deposal of Richard, had declared, that he would serve the king, and told Mr. Mordaunt, 'that he would perform all services he could, without making any conditions; and would be well content, that his majesty, when he came home, should take his head off, if he thought fit; only he desired that the king might know the truth of his case,' which was this: He was a gentleman of a good extraction, and near allied to Cromwell, who had drawn him into the army before, or about the time when he came first to age, where he grew to be a colonel of horse, and to have the reputation of great courage against the enemy, and of equal civility to all men. It is very true, he was named amongst those who were appointed to be judges of the king; and it is as true, that he was never once present with them, always abhorring the action in his heart, and having no other passion in any part of the quarrel, but his personal kindness to Cromwell. The next day after the horrible sentence was pronounced, he had an occasion to speak with an officer, with whom he was told, was in the Painted Chamber; where, when he came thither, he saw Cromwell, and the rest of those who had sat upon the king, and were there, as he found afterwards, assembled to sign the warrant for the king's death. As soon as Cromwell's eyes were upon him, he ran to him, and taking him by the hand, drew him by force to the table; and said, 'though he had escaped him all the while before, he should now sign that paper as well as they;' which he, seeing what it was, refused with great passion, saying, 'he knew nothing of the business,' and offered to go away. But Cromwell, and others, held him by violence; and Cromwell, with a loud laughter, taking his hand in his, and putting the pen between his fingers, with his own hand wrote 'Richard Ingoldsby,' he making all the

resistance he could : and he said, ‘ if his name ‘ there were compared with what he had ever ‘ wrote himself, it could never be looked upon ‘ as his own hand.’—Though his majesty had within himself compassion for him, he would never send him any assurance of his pardon ; presuming that, if all these allegations were true, there would be a season when a distinction would be made, without his majesty’s declaring himself, between him and those other of that bloody list, which he resolved never to pardon. Nor was Ingoldsby at all disheartened with this, but pursued his former resolutions, and first surprised the castle of Windsor (where there was a great magazine of arms and ammunition) and put out that governor who the Rump had put in ; and afterwards took Lambert prisoner, as is before remembered.”

Some things about the Regicides are to be found in Noble’s Memoirs of Cromwell’s Family, and his Lives of the Regicides, neither of which works however is very satisfactory. Ludlow, with some others, retired to Switzerland, where he died in 1693, in his seventy-third year. In his Memoirs he relates the repeated attempts which were made by the family of Charles to assassinate him and his associates there, and other curious parts of their history. Upon the Revolution he came to England with an expectation of being employed by King William in Ireland ; but he was soon compelled to return in consequence of an Address of the Commons, (see 5 Cobb. Parl. Hist. 412) which was presented to the king by sir Edward Seymour, to whom had been granted Ludlow’s forfeited estate in Wiltshire.

Whaley, Goffe and Dixwell fled to America. Hutchinson, in his History of Massachusetts Bay, gives the following curious account of them :

“ In the ship which arrived from London, the 27th of July 1660, there came passengers col. Whaley and col. Goffe, two of the late king’s judges. Col. Goffe brought testimonials from Mr. John Rowe and Mr. Seth Wood, two ministers of a church in Westminster. Col. Whaley had been a member of Mr. Thomas Goodwin’s church. Goffe kept a journal or diary from the day he left Westminster, May 4, until the year 1667, which together with several other papers belonging to him I have in my possession. Almost the whole is in characters of short hand, not very difficult to decipher. The story of these persons has never yet been published to the world. It has never been known in New-England. Their papers after their death were collected, and have remained near a hundred years in a library in Boston. It must give some entertainment to the curious. They left London before the king was proclaimed. It does not appear that they were among the most obnoxious of the judges,\* but as it was expected vengeance would be taken of some of them,

and a great many had fled, they did not think it safe to remain. They did not attempt to conceal their persons or characters when they arrived at Boston, but immediately went to the governor, Mr. Endicott, who received them very courteously. They were visited by the principal persons of the town, and among others they take notice of col. Crown’s coming to see them. He was a noted royalist. Although they did not disguise themselves, yet they chose to reside at Cambridge, a village about four miles distant from the town, where they went the first day they arrived. They went publicly to meetings on the Lord’s days, and to occasional lectures, fasts, and thanksgivings, and were admitted to the Sacrament, and attended private meetings for devotion, visited many of the principal towns, and were frequently at Boston, and once, when insulted there, the person insulting them was bound to his good behaviour. They appeared grave, serious and devout, and the rank they had sustained commanded respect. Whaley had been one of Cromwell’s lieutenant-generals, and Goffe a major-general. It is not strange that they should meet with this favourable reception, nor was this reception any contempt of the authority in England. They were known to have been two of the king’s judges, but king Charles the second was not proclaimed when the ship that brought them left London. They had the news of it in the channel. The reports afterwards by way of Barbadoes were that all the judges would be pardoned but seven. The act of indemnity was not brought over until the last of November. When it appeared that they were not excepted, some of the principal persons in the government were alarmed, pity and compassion prevailed with others. They had assurances from some that belonged to the general court that they would stand by them, but were advised by others to think of removing. The 22d of February the governor summoned a court of assistants to consult about securing them, but the court did not agree to it. Finding it unsafe to remain any longer, they left Cambridge the 26th following and arrived at New-Haven the 7th of March. One capt. Breedan, who had seen them at Boston, gave information thereof upon his arrival in England. A few days after their removal, an hue and cry, as they term it in their diary, was brought by the way of Barbadoes, and thereupon a warrant to secure them issued, the 8th of March, from the governor and assistants, which was sent to Springfield and the other towns in the western parts of the colony, but they were beyond the reach of it.”\*

\* “ They were well treated at New-Haven by the ministers and some of the magistrates, and for some days seemed to apprehend themselves out of danger. But the news of the king’s proclamation being brought to New-Haven, they were obliged to abscond. The 27th of March they removed to Milford, and appeared there in the day time and made them-

selves known, but at night returned privately to New-Haven, and lay concealed in Mr. Davenport the minister's house until the 30th of April. About that time, news came to Boston that ten of the judges were executed, and the governor received a royal mandate dated March 3, 1660, to cause Whaley and Goffe to be secured. This greatly alarmed the country, and there was no doubt that the court were now in earnest in their endeavours to apprehend them; and to avoid all suspicion they gave commission and instructions to two young merchants from England, Thomas Kellid and Thomas Kirk, zealous royalists, to go through the colonies as far as Manhados in search of them. They had friends who informed them what was doing, and they removed from Mr. Davenport's to the house of one Jones, where they lay hid until the 11th of May, and then removed to a mill, and from thence on the 13th into the woods where they met Jones and two of his companions, Sperry and Burrill, who first conducted them to a place called Hatchet-harbour, where they lay two nights, until a cave or hole in the side of a hill was prepared to conceal them. This hill they called Providence hill, and there they continued from the 15th of May to the 11th of June, sometimes in the cave, and in very tempestuous weather in a house near to it. During this time the messengers went through New-Haven to the Dutch settlement, from whence they returned to Boston by water. They made diligent search and had full proof that the regicides had been seen at Mr. Davenport's, and offered great rewards to English and Indians who should give information that they might be taken, but by the fidelity of their three friends they remained undiscovered. Mr. Davenport was threatened with being called to an account for concealing and comforting traitors, and might well be alarmed. They had engaged to surrender rather than the country or any particular persons should suffer upon their account, and upon intimation of Mr. Davenport's danger, they generously resolved to go to New-Haven and deliver themselves up to the authority there. The miseries they had suffered and were still exposed to, and the little chance they had of finally escaping in a country where every stranger is immediately known to be such, would not have been sufficient to have induced them. They let the deputy governor Mr. Leete know where they were, but he took no measures to secure them, and the next day some persons came to them to advise them not to surrender. Having publicly shewn themselves at New-Haven, they had cleared Mr. Davenport from the suspicion of still concealing them, and the 24th of June went into the woods again to their cave. They continued there, sometimes venturing to a house near the cave, until the 19th of August, when the search for them being pretty well over, they ventured to the house of one Tomkins near Milford, where they remained two years, without so much as

going into the orchard. After that, they took a little more liberty and made themselves known to several persons in whom they could confide, and each of them frequently prayed and also exercised, as they term it, or preached at private meetings in their chamber. In 1664 the commissioners from king Charles arrived at Boston. Upon the news of it they retired to their cave, where they tarried 8 or 10 days. Soon after, some Indians in their hunting discovered the cave with the bed, &c. and the report being spread abroad, it was not safe to remain near it. On the 13th of October 1664 they removed to Hadley, near an hundred miles distant, travelling only by night, where Mr. Russell, the minister of the place, had previously agreed to receive them. Here they remained concealed fifteen or sixteen years, very few persons in the colony being privy to it. The last account of Goffe is from a letter dated Ebenezer, the name they gave their several places of abode, April 23, 1679. Whaley had been dead some time before. The tradition at Hadley is, that two persons unknown were buried in the minister's cellar. The minister was no sufferer by his bounders. They received more or less remittances every year, for many years together, from their wives in England. Those few persons who knew where they were, made them frequent presents. Richard Saltonstall, esq. who was in the secret, when he left the country and went to England 1672, made them a present of fifty pounds at his departure, and they take notice of donations from several other friends. They were in constant terror, though they had reason to hope, after some years, that the enquiry for them was over. They read with pleasure the news of their being killed with other judges in Switzerland. Their diary for six or seven years contains every little occurrent in the town, church, and particular families in the neighbourhood. These were small affairs. They had indeed for a few years of their lives been among the principal actors in the great affairs of the nation, Goffe especially, who turned the members of the little parliament out of the house, and who was attached to Oliver and to Richard to the last; but they were both of low birth and education. They had very constant and exact intelligence of every thing which passed in England, and were unwilling to give up all hopes of deliverance. Their greatest expectations were from the fulfilment of the prophecies. They had no doubt that the execution of the judges was the slaying of the witnesses. They were much disappointed when the year 1666 had passed without any remarkable event, but flattered themselves that the Christian era might be erroneous. Their lives were miserable and constant burdens. They complain of being banished from all human society. A letter from Goffe's wife, who was Whaley's daughter, I think worth preserving. (Appendix.) After the second year Goffe writes by the name of Walter Goldsmith, and she of Frances Goldsmith, and the correspon-

dence is carried on as between a mother and son. There is too much religion in their letters for the taste of the present day, but the distresses of two persons under these peculiar circumstances, who appear to have lived very happily together, are very strongly described.

"Whilst they were at Hadley (Feb. 10, 1664) Dixwell, another of the judges, came to them, but from whence, or in what part of America he first landed, is not known. The first mention of him in their journal is by the name of col. Dixwell, but ever after they call him Mr. Davids. He continued some years at Hadley and then removed to New-Haven. He was generally supposed to have been one of those who were obnoxious in England, but he never discovered who he was until he was on his death-bed. I have one of his letters signed James Davids, dated March 23<sup>d</sup>, 1683. He married at New-Haven and left several children. After his death his son, who before had been called Davids, took the name of Dixwell, came to Boston, and lived in good repute, was a ruling elder of one of the churches there, and died in 1721 of the small-pox by inoculation. Some of his grandchildren are now living. Col. Dixwell was buried at New-Haven. His grave stone still remains with this inscription. "J. D. esq. deceased March 18th, in the 82<sup>d</sup> year of his age, 1683."

"It cannot be denied that many of the principal persons in the colony greatly esteemed these persons for their professions of piety and their grave deportment, who did not approve of their political conduct. Mr. Mitchell the minister of Cambridge, who shewed them great friendship upon their first arrival, says in a Manuscript which he wrote in his own vindication, "Since I have had opportunity by reading and discourse to look a little into that action for which these men suffer I could never

see that it was justifiable." After they were declared traitors they certainly would have been sent to England if they could have been taken. It was generally thought they had left the country; and even the consequence of their escape was dreaded, lest when they were taken those who had harboured them should suffer for it. Mr. Endicot the governor writes to the earl of Manchester, that he supposes they went towards the Dutch at Manhatoes, and took shipping for Holland, and Mr. Bradstreet the then governor in December 1684, writes to Edward Randolph, "that after their being at New-Haven he could never hear what became of them." Randolph, who was sent to search into the secrets of the government, could obtain no more knowledge of them than that they had been in the country, and respect had been shewn them by some of the magistrates. I am loth to omit an anecdote handed down through governor Leveret's family. I find Goffe takes notice in his journal of Leveret's being at Hadley. The town of Hadley was alarmed by the Indians in 1675 in the time of public worship, and the people were in the utmost confusion. Suddenly, a grave elderly person appeared in the midst of them. In his men and dress he differed from the rest of the people. He not only encouraged them to defend themselves, but put himself at their head, rallied, instructed and led them on to encounter the enemy, who by this means were repulsed. As suddenly, the deliverer of Hadley disappeared. The people were left in consternation, utterly unable to account for this strange phenomenon. It is not probable that they were ever able to explain it. If Goffe had been then discovered, it must have come to the knowledge of those persons who declare by their letters that they never knew what became of him."

306. Proceedings upon an Impeachment against WILLIAM DRAKE, for Writing, Printing, and Publishing a false, wicked, malicious, and seditious Pamphlet, intituled, "The Long Parliament revived:" 12 CHARLES II. A. D. 1660. [Commons' Journals. 4 Cobb: Parl. Hist. 145.]

November 17, 1660.

MR. Secretary Morrice acquainted the house of Commons, That he had found out and examined the author of the dangerous Book, called "The Long Parliament revived." That his name was William Drake; that he had confessed to him he wrote the said Book, which struck at the root of their proceedings; and that he was in custody at the door.—Captain Tirus said, That he knew the man to be a loyalist, and a great sufferer for the king, but did not believe he wrote the Book, though

he had the vanity to own it. This was seconded by Mr. Hollis. And Mr. Bamfield moved for slighting the business, as the best way to get rid of it. However, the prisoner was ordered to be called in, and being at the bar, the Speaker asked him, Whether he wrote that Book which was then shewn him? He confessed he did write it, but said, It was out of his depth of loyalty and integrity to the king, and for the benefit of the kingdom: that he had been a great sufferer already for the royal cause, and it would be hard indeed to make him now suffer again for doing what he thought, was right for his sovereign. The Speaker again asked him, Whether he had the

\* The Pamphlet is published at length in 4 Cobb. Parl. Hist. App. No. 1.

help of any one else in it? He answered, No, he had no help but only of the lord Coke's books; and that he had put the name of Phillips to the Book, because he himself, being a merchant, could not be thought to write such a book.

Mr. Drake being withdrawn, sir John Frederick and sir Edward Massey both spoke in his favour. Mr. Prynne moved to refer it to a committee. Sir Heneage Finch said, That he could not think any thing more dangerous than the writing this Book at such a time; that it blew up this parliament totally, and damned the Act of Oblivion: and the author had shewed himself the greatest incendiary that could be, and all his former merits could not countervail this action. Therefore he moved to proceed to justice with him, and that he should stand committed, and the business be referred to the committee of privileges. All which was ordered; and that they should read over the said Book, examine and state the material points that are offensive there, and report them to the house.

Nov. 20. Serjeant Raynesford reported that the Committee appointed to examine Mr. Drake's Book had come to the following Resolutions:

1. "That the pamphlet, intituled "The Long Parliament revived," &c. is seditious in those particulars which were alledged at the committee. 2. That the house be moved to order that the said Pamphlet be publicly burnt by the hands of the common hangman. 3. That the house be desired to appoint a committee for the drawing up an impeachment, in the name of all the Commons of England, against William Drake, for penning and publishing of this seditious Pamphlet, to be presented to the lords. 4. That the house be moved, That the said William Drake may be kept under such restraint, that none may have access to speak with him."

Sir Edward Massey presented a Petition to the house, from Mr. Drake, acknowledging his faults as a rash and inconsiderate action; that he had ever retained his loyalty, and humbly begged the king's pardon and the favour of the house. Sir Edward spoke also in his behalf, saying, That he looked upon him to be distempered, and therefore desired the favour of the house for him.

Mr. Secretary Morrice said, That punishment in the Greek was the same as example, and that he ought to be made one, because he did not own their power; and moved to agree with the committee.

Captain Titus spoke highly in his favour, saying, he did not think him infallible, though he knew him to be extremely loyal; but he wanted that temper of mind which he ought to have; and added, that his former merits should compensate for his present slip. Lord Falkland was for condemning him first, and then leave him to the king's mercy. Sir Harry North said, It was true he had been loyal, but did not know whether he was so then; and was

for agreeing with the committee. Mr. Hyde moved to examine him again, whether any one saw this Book, and approved it before it was published, and was for agreeing with the committee. Mr. Palmer was for making him an example.

Sir Heneage Finch said, the price of the Book was raised, and that every one hoped all would be turned up-side down again; that the burning the Book was too tame a punishment; that no man had merit enough to expiate the setting the kingdom in a flame again; and moved to agree in all with the committee.

Mr. Annesley said, He did agree that the Book was seditious, but the man repented of it, and had formerly merited; that it was hard to ruin a man for the first fault, and moved to forbear a while the severity of his punishment, but to burn the book.

Sir John Northcot said, it was not safe nor honourable for them to spare him; and moved to agree in all with the committee but the imprisonment.

Mr. Howard, That, he was a person who was writing a 'Mene Tekel' upon the wall against them, and that they would not so much as rap him upon the fingers; that he ought to be severely punished, by being tied up to the gallows, whilst his Book was burning below it; for if he, being a friend, wrote in that manner, what would their enemies do? Sir John Potts moved to have him make a public recantation whilst his book was burning. Mr. Knight, to make an example of him, notwithstanding his former merits.

At last Mr. Harris moving to put the Resolves of the committee, singly, to the question, it was voted, *non con.* That the Book was seditious; that an Impeachment be drawn against Mr. Drake; and that sir Heneage Finch go up to the lords with it, the next morning, and carry the Book along with him.

But though this prosecution against Mr. Drake was ordered in so warm a manner, he did not find that the Commons made any great haste in it. For though the Impeachment was brought in, read, and ordered to be ingrossed, on the 26th instant, and the manner of presenting it to the lords ordered to be considered of on the 29th, we hear no more of the matter till the 4th of the next month.

December 4. The long-designed Impeachment against William Drake was ordered to be carried up to the lords, by the lord Falkland, and delivered at the bar of that house, in the name of the House of Commons, and of all the Commons in England. This Impeachment is entered in both the Journals, as follows:

"The Knights, Citizens, and Burgesses of the House of Commons, in the name of themselves and all the Commons of England, do hereby declare, complain and shew; against William Drake, citizen and merchant of London;

"That whereas this present parliament,

through the blessing of God upon their endeavours, and the incomparable grace and goodness of his majesty's royal condescensions, have proved the happy instruments of repairing the breaches of this kingdom, restoring the antient foundations, and passing many good and wholesome laws for the safety and quiet of the people, and are daily preparing such others as may yet seem to be wanting.

"Nevertheless the said William Drake, in contempt of his majesty's crown and dignity, and of the laws and government of this kingdom, and out of a wicked and malicious intention to scandalize and subvert the authority and being of this present parliament,\* and to raise and stir up sedition and division in this kingdom, and against the peace of our sovereign lord the king, hath lately, that is to say, upon or before the 18th day of November last at Westminster, in the county of Middlesex, written, printed, and published, in the name of one Thomas Phillips, gentleman, a certain false, wicked, malicious, and seditious Pamphlet, intitled, 'The Long Parliament revived; or An Act for continuation, and the not dissolving the Long Parliament, called by king Charles the First, in the year 1640, but by an act of parliament, with undeniable Reasons deduced from the said Act, to prove, that That Parliament is not yet dissolved. Also, Mr. William Prynne's five Arguments fully answered, whereby he endeavours to prove it to be dissolved by the King's Death, &c. By Thomas Phillips, Gentleman, a sincere Lover of the King and Country.' In which said scandalous and seditious Pamphlet the said Drake, amongst many other wicked expressions, clauses, and assertions therein contained, doth falsely, maliciously, and seditiously affirm and declare,

\* "This Parliament was summoned, by writs issued under the direction of an ordinance, passed on the 16th of March, 1659, by the remanence of that house of commons that had been called by Charles the First, on the 3rd of November, 1640.—The ordinance was entitled, 'A Bill for dissolving the Parliament begun and holden at Westminster, on the 3rd of November, 1640, and for the calling and holding a Parliament at Westminster, on the 25th day of April, 1660.' It was however thought advisable, afterwards, when the legal government was re-established, to pass an act of parliament to remove all disputes concerning the assembling and sitting of this Parliament; and it was accordingly declared and enacted, 'That the Parliament begun and holden at Westminster, on the 3rd of November, 1640, is fully dissolved and determined, and that the Lords and Commons now sitting at Westminster, in this present parliament, are the two houses of parliament, to all intents, constructions,

1. That all other Parliaments have no legal capacity, till this (meaning the Long Parliament, called in the year 1640) be legally dissolved.

2. The Act (meaning the Act of Parliament to which the title of the Pamphlet refers) is herein express, That by no other way or means, but by an act of parliament, it shall be dissolved; which, as it cannot be done by the dead king, but may be done by the successor, it ought to be so dissolved; or else it must and doth by virtue of this act, still remain legally in full being and authority. 3. How much it were to be wished, that the legislative authority might revert into that channel (meaning the Long Parliament aforesaid) by which the peace and settlement of the nation, through his majesty's most gracious influence, might durably, and without question, be provided for and preserved. 4. If that be a lawful parliament, (speaking of the Long Parliament aforesaid, which he elsewhere affirmed to be in being) then this can be none, nor no other, till this be legally dissolved.

"All which practices for stirring up of sedition, the Commons are ready to prove, not only by the general scope of the said Book, but likewise by several clauses therein contained, besides these before-mentioned, and such other proofs as the cause, according to the course of parliament, shall require. And do pray, that the said William Drake may be put to answer all and every of the premises; and that such proceeding, examination, trial, judgment, and exemplary punishment, may be thereupon had and executed as is agreeable to law and justice."

The lords ordered this Impeachment to be read, after which they made another Order, That the said William Drake should be apprehended as a Delinquent, by the serjeant at arms, and brought before them the next morning, to answer to his charge; which being done, and he confessing his fault, the Lords, in consideration of the shortness of time for proceeding further in this business, left him to be prosecuted in the King's Bench by the Attorney General; where what further was done with him we know not.

"It appears, that though that Long Parliament had been dissolved by an Ordinance issued from the Rump Parliament, yet that it was thought necessary, after the Restoration, by an Act of Parliament, to declare, 'That that Parliament, begun and holden at Westminster on the 3rd of November, 1640, was fully dissolved and determined.' The royal assent had been given to this bill by king Charles 2, on the 1st of June, 1660; notwithstanding which, it appears, that, at the time Drake published this pamphlet, very considerable and legal doubts were still entertained upon this question; insomuch that, on the 24th of May, 1661, (subsequent to this Impeachment) the house of lords thought proper to call upon the judges to deliver their opinion upon it; and on the 6th of June, they order the Attorney General, to

assent on the 1st of June, 1660, immediately after the restoration." 2 Hatsell, 280.

prepare a third bill upon this subject; which he does accordingly. So that the house of lords (by giving orders to the Attorney General, on the 19th of December, 1660, to prosecute Drake in the Court of King's Bench) acted prudently, in availing themselves of any excuse, however trifling, for removing the trial of this supposed offence from themselves to a court of law."

"What further steps were taken in this matter does not appear; probably no prosecution whatever was had; because, on the 31st of

May, and 6th of June, 1661, the Lords themselves so far countenanced the doctrine contained in Drake's book, as to put a question to the Judges, 'Whether the Parliament, begun 'on the 3rd of November, 1640, is now determined?' and, though the Judges give an unanimous opinion in the affirmative, the Lords still think proper to order the Attorney General to prepare a declaratory bill upon this subject. I do not find any progress made in this bill (the third upon this subject) it certainly did not pass." 4 Hutsell, 135, 174.

## 207. Proceedings in Scotland against ARCHIBALD Marquis of ARGYLE, for High Treason: 12 & 13 CHARLES II. A. D. 1661.\*

ON January 23, 1661, there was exhibited to the Parliament of Scotland, a Charge of High-Treason, &c. against Archibald Marquis of Argyle, which was as follows:

"Charles, by the grace of God, king of Great-Britain, France, and Ireland, Defender

of the Faith, To

heralds, pursuivants, and messengers of arms, *respective*, conjunctly and severally, specially constituted, greeting. Forsomuch as it is humbly meant and complained to us, by our trusty and well-beloved counsellor, sir John

\* "When the king was restored, on the promise of an amnesty to his English subjects, no indemnity was promised or proposed for Scotland; and it was deemed expedient that the nation should still remain at the mercy of the crown. Argyle, encouraged by some equivocal expressions of Charles, had repaired privately to court, but the royalists, who grasped at his possessions, were apprehensive of a crafty, insinuating statesman, whose former credit with the king might revive. On demanding admittance to the royal presence, he was committed to the Tower, and accused of a secret participation in the murder of the late king. His trial was transferred to Scotland, where he was produced and arraigned in parliament on separate indictments of oppression and treason. The severities inflicted on the royalists during the civil wars, and the cruelties retaliated on the adherents of Montrose, were accumulated in his indictments. He was accused as the author of every national act from the commencement of the wars; as an accessory to the surrender and execution of the king; and an actor under the late usurpation, in opposition to those who appeared for the crown. His defence was vigorous and plausible at least, if not always just. He affirmed that the atrocities imputed to his clan were partly fictitious, partly exaggerated; committed during his absence in England, from the violence of the times; and that a cruel revenge was to be expected from his people, whose country had been twice wasted with fire, and devoted to the sword. His transactions during the war were conducted under the authority of the legislature, to whom the surrender of the king must be ascribed; but his public transactions were protected from inquiry, by the act of oblivion, passed in consequence of the treaty of Rippon, and by the indemnity granted by Charles in the parliament at Stirling, of which

he records were lost, but the memory was still recent in the minds of men. His compliance with the late usurpation was necessary for his preservation, or excusable from the contagious example of the times. While resistance was practicable he was the last to submit; but his solitary resistance, after the nation had submitted to a conqueror, would neither have secured himself, nor restored the king. From his peculiar situation in life, more than a passive compliance was required for his preservation; and if to mitigate the oppression of his country, he was returned a member to Richard's parliament, the recognition of a power *de facto*, and without his assistance in possession of the government, never implied an acknowledgment of its original title; much less a treasonable opposition to the rightful heir, while excluded from the throne. 'What could I think,' he exclaimed, 'or how suppose, that these unhappy compliances were criminal, at the time when a man so learned as his majesty's advocate, received the same oaths to the 'commonwealth with myself?' Sir John Fletcher, lord advocate, interrupted and reviled him in the most opprobrious terms, but he calmly replied, That he had learned in his afflictions to endure reproach; and perceiving his ruin predetermined, demanded, but was denied permission to submit implicitly to the mercy of the king.

"During this important trial, the most solemn which the nation had ever witnessed, lord Lorn was employed to solicit favour for his father at court. He procured a royal mandate, not to prosecute any public offences previous to the indemnity granted at Stirling, nor to pronounce a sentence, till the whole trial was submitted to the king. The first part of the order was imperfectly obeyed; the last, as expressive of a mistrust in parliament, was recalled. The commissioner, anxious that Argyle should

Fletcher knight, our advocate for our interest in the action under-written; and by sir James

suffer as a regicide, to prevent the restitution of his family to his estate and honour, undertook the management of the debate in person which he conducted as if forgetful of his own dignity, or the decency requisite in a public character. From the secret consultations held with Cromwell, when invited to Scotland to suppress the engagement, he concluded the interruption of the treaty at Newport, and the execution of the late king, had been concerted with Argyle. An attainer founded on such weak and remote presumptions, was abhorred by many, and was opposed by president Gilmour, with a force of argument that compelled the reluctant parliament to exculpate Argyle from all participation in the death of the king. Nothing but his compliance with the usurpation remained. While his condemnation was still uncertain, Monk, with his accustomed baseness, transmitted to parliament some confidential letters from Argyle, expressive of a cordial attachment to the Protector's government. They arrived after the evidence was finished, but were read by Middleton in the midst of the debate. The perfidious friendship of Monk, and the violation of every judicial form, excited general indignation; but the unexpected appearance of Argyle's correspondence silenced his friends, who withdrew from an unavailing opposition to his fate. Sentence of treason was immediately pronounced. He was condemned to be beheaded within two days, and his head to be affixed to the public prison, to replace that of Montrose, for whose remains a splendid funeral was appointed. He requested in vain a respite of ten days, till his sentence should be communicated to the king, and complained in the spirit of enthusiasm, 'I have placed the crown upon his head, and this is my reward! but he hastens me to a better crown than his own; nor can you deprive me of that eternal indemnity which you may require yourselves.'

"The interval between his sentence and execution was spent with the clefty, in religious exercises, and he prepared for death with a fortitude not expected from the natural timidity of his character. On the morning of his execution, he wrote a letter to the king, to vindicate his own memory and to implore protection for his son. He dined with his friends at noon, before ascending the scaffold, and was accompanied by several of the nobility to the place of execution. His appearance on the scaffold was solemn but intrepid. He spoke in vindication of his own innocence, deplored the times that were likely to ensue, and exhorted the people to suffer rather than to offend against their conscience, or to abandon the covenant. After an interval of devotion, he submitted his neck to the block, and his head was separated from his body by the descent of the maiden." 4 Laing, p. 11.

It is scarcely possible to omit an expression

Lamond of Inneryne knight for himself and in the behalf of his kindred, friends, vassals, tenants and servants,

parties grieved and damnified in manner after specified, upon Archibald marquis of Argyle;\* George Campbell, his justice and sheriff deputy; James Campbell of Ardkinglas, officer under the said marquis's command; Colin Campbell of Strathgairn, Duncan Campbell of Ellangreg, officer under the command of the said marquis; John Campbell fiere of Dunstaffneich, officer also under the said marquis's command; Dougal Campbell alias Mackconnochie of Innerraw, officer under the said marquis's command; Duncan Campbell, uncle to the laird of Lochnell, officer under the said marquis's command; Robert Campbell of Auchinwillie, John Campbell of Ardariche, Hew Campbell his son; Colin Campbell of Otter, Patrick Campbell his brother; ——— Campbell of Derburgh, Charles Campbell of Ballachyill, Ewer Campbell of Kilbryd his brother; Duncan Glassel alias Campbell in Glendarowell, John Ger Campbell, there; John Mackeroes, officer to the said George Campbell, Donald Mackeroes of Glenselloch, Andrew Macklauchlane, uncle to Archibald Macklauchlane of Lethinmore, Angus Mackelhornock son to Ewer Mackewernock of Obb, James Campbell of Orinsay, Dowgald Mackleliche of Bralychane, Duncan Mackleliche in Escog, Archibald Campbell in Evinnochane, son-in-law to the said laird of Otter, Mr. Colin Macklauchlane, minister at Lochgailshaid: All or the most part of them, being the said marquis of Argyle's friends, followers, or complices under his command, and such as he might have stooped or let.

"That where notwithstanding by the 129 Act of the eighth Parliament of our dearest grandfather, king James the 6th of blessed memory, his majesty and his three estates then assembled in Parliament, ratified and approved the royal power and authority, over all estates, as well spiritual as temporal, within this realm, in the person of his majesty, his heirs and successors; and did statute and ordinance, that his highness and his successors by themselves, and their councils, were and should be judges competent to all persons, his highness's subjects, of whatsoever degree, function, estate, or condition they should be of, in all matters wherein they, or any of them, should be apprehended, summoned or charged to answer: And that none should presume, nor take upon hand, to decline the judgment of his highness, his heirs and successors, or their council, in the premises, under the pain of reason: And sick-like, by the first act of the eighth Parliament of our said dearest grand-

of regret, that any page of Mr. Laing's valuable work should be disfigured by any semblance of the unnatural, unsatisfactory, *innuendo*, style of Gibbon.

\* He had crowned the king at Scone, in 1650. See 3 Laing's Hist. of Scotland, 347.



father, king James the 6th, his majesty's sovereign authority, princely power, royal prerogative and privilege of his crown, over all estates, persons, and causes whatsoever. And the whole estates then convened in parliament for them, and their successors, faithfully promised, perpetually to acknowledge, obey, maintain, defend and advance the life, honour, safety, dignity, sovereign authority and, prerogative royal of our said dearest grandfather, his heirs and successors, and privilege of the crown, with their lives, lands and goods; and to withstand all persons, powers and estates, who shall presume any ways to impugn, or pre-judge the same. Which Act is ratified by the third act, by the first Parliament of king Charles the first, of blessed memory, our dearest father.

"Likeas, by the third and fourth acts of king James the first, his first Parliament, and by the 37 act of the second parliament of king James the first, and several other acts, it is statute, that none rebel against the king's person or authority; or if they do in the contrary, or make war against his lieges, or reset any such traitors, or supply them in red or council, or do favours to rebels, or any ways assist them, or do not rise at his majesty's command, being required; they being convicted thereof, are punishable as traitors. Likeas by the 134 act Parl 8. the 10 act of the 10 Parl. of king James the 6th, all depravers of his majesty's laws, and meddlers in his majesty's affairs, or misconstruers of his proceedings, whereby any mistake may be moved between his majesty and his loving subjects, are punishable by death. Likeas by 1 act of king James the 5th, his third parliament, and by the 51 act of the 11 Parl. of king James the sixth, all burners of folks in their houses, all burners of houses and corns, and wilful fire-raising; as also all murder or slaughter of his majesty's lieges, where the party slain is under trust, credit, assurance and power of the slayer, the same is declared treason and lese-majesty. Likeas by the 75 act of queen Mary's parliament 9, and divers other acts, it is statute, that no manner of person or persons, of whatsoever quality, estate, condition or degree they be, lieges of this realm, attempt to raise any bands of men of war, on horse or foot, without special license in writ had and obtained of the queen's majesty for the time, and her successors, under the pain of death, to be executed upon the raisers and risers in arms. As also, by the 50 act of the 11 parliament of king James the sixth, it is statute and ordained, that in case it shall happen, any landed man to be convicted of the crime of common theft, resort of theft, or stealth, reift in time coming, they shall incur the crime and pain of treason; that is to say, tiussell and forfeiture of life, lands, and goods. Likeas, by the common law and practice of this nation, all committers of murder, manslaughter, robbery, rapine, or reift, is punishable by death; and who are art or part of any such crimes. As also by the same

laws, all private prisoners, keepers of private prisons, and false prisoners, and all oppression whatsoever, are punishable in the like manner.

"Nevertheless the persons above-named complained upon having laid aside all fear of God, loyalty and obedience to their sovereign lord and king, natural affection and reciprocal duty to their countrymen and fellow subjects, have most traitorously, treacherously, perfidiously and cruelly committed the crimes of high-treason, and other crimes, murders, oppressions, robberies, misdeed and malversations under-written, contrary to our said laws and acts of parliament; and thereby have incurred the respective pains and punishments therein contained. In so far as the said persons above written, defendants, particularly the said marquis of Argyle, George Campbell his servant, and justice, and sheriff-deputy; James Campbell of Ardkinglas, Colin Campbell of Strathgairn, Robert Campbell of Auchinwillie, John Campbell of Ardtariche, Master Colin Mac-lauchlane, Duncan Campbell of Elangrigg, John Campbell fiare of Dunstaffniche, Douall Campbell, alias Mackconnochie of Innerne; having from the beginning of the insurrections and troubles in the year of God 1639, 1640, 1641, and 1642, both secretly and avowedly appeared in constant opposition to our dearest father, his royal councils and commands; and after his majesty's most gracious condescendencies to all the desires of his lieges, how unreasonable soever; he having departed to his kingdom of England, a contented prince from a contented people: Nevertheless the aforesaid persons continuing in their treasonable malice against their own sovereign, did in the months of January, February, March, April, May, June, July, August, September, October, November, December, or one or other of them, in the year of God 1643, most traitorously without their sovereign's authority of licence, and expressly against his will, pleasure, and service, at their own hand and by their own power, caused call and convocate a pretended committee and convocation of his majesty's lieges; wherein they themselves, or one or other of them, did personally convene and meet; and in the said treasonable and unlawful convocation did act and appoint treasonable levies of his majesty's own subjects, in opposition to his majesty's person, authority and express command. And thereafter did actually invade and enter within his majesty's kingdom of England in open hostility, taking his majesty's towns, killing his subjects, wasting and destroying their estates and fortunes, joining with his rebellious subjects in England and an army of sectaries there, for destruction of his majesty's person, royal family, authority and government of these nations, so far as in them lay. And thereafter in the months above-written, or one or other of them, in anno 1646, the said Archibald marquis of Argyle, and the remnant persons above-named defendants, or one or other of them, in an

unheard-of way of treachery and treason, delivered his majesty's sacred person into the hands of the said rebels, who thereafter most treacherously murdered him. For eschewing and preventing whereof, the whole estates of this nation finding it necessary and incumbent to them, for the relief of their sovereign lord from his captivity, to raise an army for that effect: The said persons complained upon, or one or other of them, not only by subtle and clandestine means, by declamations and familiar conferences, and openly by declarations and public speeches in face of parliament, opened the same; but also the same being past into an act in the month of 1648 years, publicly entered their

Disassent or Protestation against the same, most treasonably and treacherously against the authority of the king, our dearest father, and the estates of parliament. And yet their malice not resting satisfied, they did by themselves, their friends and adherents, in October 348 years, or thereby, convocate or raise in arms great numbers of his majesty's lieges, without any warrant from king or parliament; and did in open hostility march to his majesty's burghs royal of Edinburgh and Sterling, prosecuting his said army, killing his majesty's good subjects, wasting and destroying their lands and houses: And thereafter most basely and traitorously invited the late tyrant and usurper, Oliver Cromwell, to enter his majesty's kingdom of Scotland, with an army of strangers, traitors and sectaries; sustained him and his treasonable army with all sorts of provision, feasting and countenancing himself and prime officers in the metropolitan city of our kingdom, and within his majesty's fort and strength thereof, the castle of Edinburgh, where the most considerable strength of the kingdom was for the time: By these means casting the secresies of his majesty's kingdom and forts thereof open to the view of those strangers and traitors? Which, by the laws of this and all nations, is high treason; and in all probability was the kingdom's bane and ruin; and was the act immediately preceding the cruel regicide and murder of their sacred sovereign our royal father. At least they, or one or other of them, were either aiders, abettors, assistants, promoters, devisers, or art and part, and particularly the said marquis of Argyle, of the aforesaid treasonable crimes and others above libelled.

"Secondly, The aforesaid persons, and particularly the said Archibald marquis of Argyle, not having yet satisfied his malice, treasonable attempts and purposes, not considering the duty either he owed to God, his prince, country, nobility of his family, nor his own honour or reputation, after multiplicity of honours and offices graciously conferred upon him by our sacred father, and the dignity vouchsafed to him by our self, in allowing him the trust and honour of setting our imperial crown upon our head, upon the day of our coronation in Scotland, which was the 1st of January 1651 years,

in presence of our whole nobility and estates of our said ancient kingdom, putting the crown upon our head, with bowed-down knees, and up-lifted hands, in presence of God, angels and men, swore as follows, 'By the eternal God, who liveth and reigneth for ever, I shall support thee to my uttermost: And I swear to be a loyal and true subject, and faithful to the crown.' And thereafter also kneeling, and holding his hands betwixt our hands, did swear these words, 'By the eternal and almighty God, who liveth and reigneth for ever, I become your liege, and truth and faith shall bear to you, and live and die with you, against all manner of folk whatsoever in your service.' Notwithstanding of all which, after the said Archibald marquis of Argyle had disloyally and basely deserted our person and army at Sterling, when we were on our march to England, in the year 1651, did in the months above-written, or one or other of them, anno 1652, at the desire of gen. Dean and col. Overton, our known and public enemies, they having come to Lunerary with a regiment of soldiers, and there the said marquis had conference and consultation with them, and did swear, at least subscribed and acknowledged the government of our dominions, as it was then established by the said wicked tyrant and usurper Oliver Cromwell, and his said adherents in a commonwealth, without king, or house of lords: and obliged himself to live under it, and be obedient thereto. And conform thereto most perjuredly and infamously the said Archibald marquis of Argyle, after the said army of rebels and sectaries under the command of the said general, major Dean, and Overton, were drawn to such a strait in their return from Lunerary, they being in the power of certain of the said marquis his friends, and divers others of his majesty's loyal subjects then in arms, standing in opposition against them; and they having taken in all passes, the said marquis being then our justiciary in these bounds, and sheriff of Argyle, most traitorously and infamous y, against his said oath and duty, did interpose himself in favour of the enemy, commanding and counselling our said faithful subjects, who stood in opposition to the said enemy, did suffer them, safely to pass without opposition: And by the said marquis his insinuation, there was a safe pass given to the said enemy from the foresaid danger. Like as further to evince the said marquis his treasonable compliance and affection to the said wicked tyrant and usurper Oliver Cromwell, in all his wicked and treasonable courses and attempts, he in the month of 165 years, upon a pretended call from the said tyrant and usurper, to convene a pretended parliament, without any co-action or necessity, did engyre himself in favour of some shires, and dealt with them to elect him for their commissioner; at least being elected, he voluntarily accepted thereof; and upon their said pretended commission, he went to the said pretended parliament at Westminster, and there

most perfidiously and perjuredly, treacherously, treasonably, and unworthily, contrary to his own dignity and degree, sate, and acted by voting, and otherwise, in the said pretended parliament, as a member of the house of commons, for establishing the said tyrant in his usurped authority, and abolishing of us and our royal race from our just right and title to our crowns of Scotland, England, and Ireland. And also the said Marquis, in further prosecution of his treasonable, rebellious course and designs, in the months above-written, or one or other of them, in the year 1653 or 1654, or either of them, sold and delivered several musquets and other ammunition to the said rebels, to the number of seventeen cannon, and seven hundred musquets, or thereabouts.

“Thirdly, in the year 1654, several of our loyal subjects having, for vindication of our authority, and revenge of our royal father of blessed memory, his murder, taken arms under the command of our trusty and right well-beloved cousins and counsellors William earl of Glencairne, and John earl of Middleton, then our commissioners for that effect: against whom, and our forces under their command, the said enemies being about to transport 800 men to the north, under the command of col. Cobbet, and being driven to the isle of Mule, and ship-broken in their way, and so ready to perish, the said Archibald marquis of Argyle, and the remanent persons above complained upon, or one or other of them, in the months above-written or one or other of them, in the year 1654, or 1655, did gather together all their own boats, and others, and therein did safely transport them to Dunbarton, from the said isle of Mule, and to other safe places. At least the said Archibald marquis of Argyle, and remanent persons above complained upon, or one or other of them, were authors, aiders, abettors, assisters, advisers, or art and part, of the foresaid treasons, and other crimes and misdeeds above labelled.

“Fourthly, The said Marquis, and remanent persons above complained upon, or one or other of them, in the months above-written, or one or other of them, in the year 1654, or 1655, most perfidiously, treacherously, and traitorously, went into the said English Rebels, without any coercion or necessity, to the highlands in Lochquhaber, and several other places; and joined with the said Rebels, for suppressing of the said earls of Glencairne and Middleton, then our commissioners, and our forces under their command; and countenanced, counselled, and conveyed the said Rebels through divers places in the Highlands, in their expedition against our forces. At least the said persons defendants, and particularly the said Archibald marquis of Argyle, were authors, actors, aiders, abettors, assisters, and countenancers of the said treasonable crimes, and others above specified.

“Fifthly, When the said Arch-Traitor and Regicide, diel, Richard Cromwell, his son, was by order of his father's traitorous Council, sitting at London, proclaimed Protector of our

three kingdoms, at the Market-Cross of Edinburgh; which was done accordingly by a pretended Council sitting at Edinburgh, for the time. At the doing whereof, the said Archibald marquis of Argyle, most traitorously, treacherously, and perfidiously, in the months of 1655 years, went up to the said cross of Edinburgh, at the time of the said proclamation, and did countenance and assist the same; by which our authority was altogether abolished. And moreover, to further evidence the said marquis of Argyle his willingness to serve the said usurper in the accomplishing of all his treasonable designs, and to extirpate us from our royal authority and government, he endeavoured by all means possible, when the foresaid tyrant and usurper had commanded Commissioners from shires of Scotland to appear at London, in his pretended parliament, for establishing his usurped authority, and abolishing of us and our royal race from our just right and title to our crowns of Scotland, England, and Ireland; and for suppressing of the privileges, laws and liberties of this our ancient kingdom of Scotland; the said marquis did, in obedience of the said traitorous command, obtain himself to be elected commissioner for the sherrifdom of Bamf; and thereafter went up to England, and there sat as a member of that traitorous convention and meeting at London, wherein declaration was made against us and our successors, debarring us for ever from our just and lawful right and title to the crowns of these our three kingdoms. Like as thereafter the said Marquis did embrace the office of sherrif-ship of Argyle, from the enemy, and exercised the same under them for his own ends; and did several times swear, at least subscribe, in their flours against us, our successors, crown, government and sovereignty; and to be obedient and live peaceably under their government of our kingdoms in form of a Commonwealth, as it was then established by the said traitor and usurper. Of the which treasonable deeds and acts, and others aforesaid, the said Defenders, and particularly the said Archibald marquis of Argyle, or one or other of them, were authors, aiders, abettors, assisters, contrivers, promoters and countenancers.

“Sixthly, To further manifest the said marquis of Argyle his treasonable deeds, acts and intentions against us, contrary to his oath and duty, the same evidently appears by his treasonable speeches following; in so far as he being present in a provincial assembly at Inverary in the month of \_\_\_\_\_ or one or other of the months above-written, in the year 1652, or 1653, or one or other of them, some ministers being then present, praying for his majesty's happiness and welfare, the said Marquis did openly say and declare before them, ‘That they were but fools to pray for that wicked, false, malignant king, whom God had casten off, and would never restore again;’ and certain other words to this purpose and meaning; the said Marquis having uttered the like treasonable speeches at London, and elsewhere

And also in one or other of the said two years above-written, in the month of \_\_\_\_\_ or one or other of the said months, the said Marquis being within a chamber of his mansion-house at Loch-head in Kemyre, stamping with his foot, did vaunt himself, saying, 'That he was the only man that plotted the rising of the forces in the west,' terming the same the Whigrode, which proved the main cause of our ruin. Moreover his correspondence, joining, acting and consulting with the enemy for our ruin is more manifest, in so far as he did receive precepts from the said tyrant and usurper, Oliver Cromwell, directed to his Council at Edinburgh, for payment of the sum of twelve thousand pounds sterling, for good and thankful service done by the said Marquis. Like as he did keep correspondence with the usurper Richard Cromwell, and Charles Fleetwood in the year 1658, and 1659, by missive letters and other ways. As also with Sir Archibald Johnston of Wariston, his fellow-traitor, in the said year 1659, when he sate in that traitorous meeting or Council of the Rebels at London, called the Committee of Safety, wherein the said Wariston sate as President; and did of new emit declarations for abolishing of us and our successors, from our just right and title to the crowns of these our said kingdoms. Of all which treasonable acts and deeds aforesaid, intended or committed in one or other of the months of the respective years above-written, contrary to our said laws and acts of parliament, and several other laws, the said Defendants, and particularly the said Archibald marquis of Argyle, at least they, or one or other of them, were authors, aiders, abettors, assisters, promoters, countenancers, contrivers, or art and part.

"Seventhly, Our said deceased sovereign lord and dearest father, having granted commission upon the \_\_\_\_\_ day of March, 1643 years, under his said majesty's hand, authorising and giving express order to the said Sir James Lamond to prosecute a war, and levy forces in his majesty's name, against those in rebellion, and particularly against the said marquis of Argyle, and to invade his bounds and lands, as he was the principal promoter of these odious and rebellious practices against his majesty's authority, as the said commission by way of a missive letter directed to the said Sir James at more length bears. In obedience whereunto the said Sir James, according to his allegiance and bound duty, levied all his friends and followers, and accordingly acted as became a good subject in his majesty's service, for promoting whereof, until the year 1646. That after his majesty's coming to Newcastle, and casting himself upon the trust of his army lying there, the said Sir James did then lay down arms, and with his friends retreating in a peaceable manner to his own houses of Towart and Escog, there being no other houses for the shelter of his friends, the country having been formerly wasted and burnt. After which, in the month \_\_\_\_\_ or thereabout, in the same

year, the said defendants, or one or other of them, being commanded by the said James Campbell of Ardkinglas, Dougall Campbell of Innerraw, and others their officers, and others under the said Marquis his command, did in a hostile manner lay siege to the said two houses, using all manner of violence. And the said Sir James, after all legal means used for his own defence, did bring them to a treaty wherein by articles of capitulation they did grant to him, and his said friends and followers, indemnity in their persons and fortunes, with power to pass freely where they pleased: as the said articles, subscribed by the hands of the said James Campbell of Ardkinglas, Colin Campbell of Straquhir, John Campbell fiare of Dunstaffneich, Duncan Campbell of Ellangreg, Dougall Campbell of Innerraw, Duncan Campbell uncle to the laird of Lochinell, and John Macklauchlane fiare of Criginturciff, of the date the 3rd day of June, at more length bear; Nevertheless the aforesaid persons complained upon, or one or other of them, did most perfidiously, treacherously, and treasonably, shortly after the said capitulation, plunder the said houses of their whole furniture and goods therein; and did rob and take away from the persons within the same, their whole money and cloaths, did drive their whole cattle of all sorts, which together with the wastations formerly done by them, to the said Sir James, his friends, vassals and tenants, did exceed the sum of 50,000*l.* sterling. And in a most cruel and barbarous way, whilst some of his poor friends were rescuing their own goods, they barbarously murdered and massacred a number of innocent women, as namely, Marie Glaspie, Marione Mackleish, a young maid, Galeoch Breedmachfoyne, Margaret Crawford, and certain others; and inhumanly left their bodies, as a prey to ravenous beasts and fowls. At the least, the said persons, or one or other of them, and particularly the said marquis of Argyle, were authors, actors, aiders, abettors, assisters, contrivers, and art and part of the said cruel and bloody murders, robberies, oppressions, and other deeds and malversations above labelled.

"Eighthly, The said persons defendant, shortly after the said capitulation, and contrary to the same, or one or other of them, and especially the said James Campbell of Ardkinglas, Dougall Campbell of Innerraw, Colin Campbell, of Straquhir, Duncan Campbell of Ellangreg, Duncan Campbell uncle to the laird of Lochinell, John Campbell, fiare of Dunstaffneich, did most treacherously, perfidiously, and traitorously fetter and bind the hands of near two hundred persons of the said Sir James his friends and followers, who were comprehended within the said capitulation; detaining them prisoners with a guard, their hands being bound behind their backs like thieves, within the said Sir James's house and yards of Towart, for the space of several days, in great torment and misery, they being his majesty's free lieges and people. Likens most traitorously and perfidiously, contrary to the said capitulation, they

did carry the said Sir James Lamond prisoner to the said house and castle of Escog, and by that means and for fear of the said Sir James's life, the keepers of the said castle being the said Sir James's friends and vassals, they did surrender the said house, upon capitulation of life, fortune and goods; which capitulation was most traitorously and perfidiously broken. And in pursuance of their further villany, after plundering and robbing off all that was within and about the said house, they most barbarously, cruelly and inhumanly murdered several, young and old, yea sucking children, some of them not one month old. And further, the said defendants, or one or other of them, and particularly the aforesaid subscribers, of the said capitulations, in the month of 1616 years, did most traitorously and perfidiously carry the whole people that was within the said house of Escog prisoners, with a guard, to the said Sir James's house of Towart; and shortly after their removal from the said house of Escog, the said defendants, or one or other of them, caused burn the same, destroying the whole orchards and plantings about the said house of Escog. And not being content with their former cruelties, they shortly thereafter carried all the said persons who were prisoners in both the said houses of Escog and Towart, bound prisoners (being his majesty's free lieges) to several boats, sending the said Sir James Lamond, his two brethren, Robert Lamond of Escog, Patrick Lamond his only son, Duncan Lamond his brother, and John Lamond of Auchingyffe, prisoners to the said George Campbell sheriff-deputy to the said marquis's house of Innerarey, at which time the said person, or one or other of them, most villainously contrary to the said capitulation, laws, and acts of parliament aforesaid, burnt the said Sir James Lamond's mansion-house of Towart: Of the which cruel crimes of treason, murders, fire-raising, burnings, oppressions, robberies, and other crimes above mentioned, committed contrary to our said laws and acts of parliament, and the capitulation above-written, the said defendants, and particularly the said marquis of Argyle, at least one or other of them, were aiders, abettors, assistants, countenancers, contrivers, promoters and counsellors of the same.

"Ninthly, the said persons defendants, or one or other of them, contrary to the aforesaid capitulations, our laws and acts of parliament, upon the day of June, 1646, most traitorously and perfidiously did carry the whole people, who were in the said houses of Escog and Towart, in the said boats, to the village of Denoon, and there most cruelly, traitorously, and perfidiously cause hang upon one tree near the number of thirty-six persons, most of them being special gentlemen of the name of Lamond, and vassals to the said Sir James, viz. Neill Macpartrick alias Lamond, Archibald Lamond son to baron Macpartrick of Cowstoyne, Robert Lamond his brother, Duncan Lamond brother to the said Robert and Hugh Lamond their other brother, Duncan

Ger Lamond in Kilmarnock, Gocie and John Lamonds his sons, Ewen Lamond in Midtown, Gilbert Lamond, Duncan Lamond, John Mackquein alias Lamond, Archibald Mackquein alias Lamond his brother, Donald Mackquein alias Lamond, Duncan and John Lamonds sons to Walter Lamond brother german to the laird of Escog, Hugh Lamond in Corrie of the Carrie, Robert Lamond in the Carrie, Duncan Lamond there, Angus Lamond there, Donald Lamond there, Walter Lamond there, Duncan Lamond called Mackwalter there, Alexander Lamond, in Ardyne of Nethercowall, William Lamond, John Mackquein younger alias Lamond, Patrick Boigle son to the deceased Mr. John Boigle minister at Rothiesay, Dougall Harper alias Mackalaster, servant to the said sir James Lamond, John Lamond son to Gilbert Lamond of Knockow, Gilbert Mackley in Glendarowall, James Lamond in Ardyne, Donald Lamond, James Mackquein alias Lamond in Neithercowall, James Lamond his son, and John Mackpatrick alias Lamond in Ardyne. And also the said persons defendants, or one or other of them, upon the aforesaid day of June 1646, most cruelly, barbarously, inhumanly and unchristianly murdered with durks, and cut down with swords and pistols the persons following, viz. John Lamond in Auchinshallech, who being about the age of fourscore years, having a flux upon him, and being also pined away with hunger and thirst, they most cruelly and barbarously stabbed him with durks and skanes at the ladder foot: and did also most barbarously murder, stab and cut down the persons following, viz. Thomas Brown, Neill Mackneill, Meldanich Mackmaw, John Mackmaw his brother, Archibald Hamiton, Meldanich Mackilmichael, Robert Michael, John Mackinlay, John Hendry, Alexander Hendry, Patrick Hendry, John Lamond, Angus Mackinnane, John Mackinnane, John Mackdougall, John Henry, William Mackwilliam alias Wilson, Hew Mackcrow, John Mackcrow his brother, John Mackperson, Donald Mackperson, Duncan Mackperson, Donald Mackilbreid Lamond, Duncan Lamond, Duncan Mackalaster, Thomas Menchryd, John Michaelson, John Moodie, and John Jamison, then provost of Rothiesay, who being shot thrice through the body, finding some life in him, did thrust several durks and skanes in him, and at last did cut his throat with a long durk; the said John Jamison not only representing his majesty's authority, as a prime magistrate of his burgh royal, was so cruelly murdered in contempt thereof, and of the statutes made in that behalf. And to manifest their further cruelty, they did cast some of the aforesaid persons into holes made for them, who were spinning and wrestling, whilst they were suffocated with earth, having denied to them any time to recommend themselves to God; albeit earnestly desired and begged by the said murdered persons. Inasmuch that the Lord from heaven did declare his wrath and dis-

pleasure against the aforesaid inhuman cruelty, by striking the tree whereon they were hanged, in the said month of June, being a lively fresh growing ash-tree, at the Kirk-yard of Denoon, amongst many other fresh trees with leaves, the Lord struck the said tree immediately thereafter; so that the whole leaves fell from it, and the tree withered, never bearing leaf thereafter, remaining so for the space of two years: which being cut down, there sprang out of the very heart of the root thereof a spring like unto blood popling up, running in several streams, all over the root, and that for several years thereafter: until the said murderers or their favourers, perceiving that it was remarked by persons of all ranks (resorting there to see the miracle) they did cause hock out the root, covering the whole with earth, which was full of the said matter like blood. Of the which cruel murders, the said persons, and especially the said marquis of Argyle, or one or other of them, were authors, actors, aiders, abettors, assisters, contrivers, countenancers and promoters, many of the said persons defendants being officers under the command of the said marquis of Argyle.\*

"Tenthly, upon the month of 1646, the said sir James Lamont, his said brethren and friends, being detuned prisoners at the said Marquis's house of Innerary, the said George Campbell sheriff and justice-deputy to the said Marquis, James Campbell of Ardkinglas, col. under the command of the said Marquis, Dougal Campbell alias Mackonnochie of Inneraw, major under the command of the said Marquis, and certain other persons being met in a kind of conventicle, who did enquire of the said sir James, whether he would submit his life and fortune to them, or not? Who answered, That he would not, pleading upon his majesty's commission, the capitulation given to him, and that he being the king's baron could not be judged by them, none of them being such. Whereunto the said George Campbell replied, that the said sir James was a false knave, and that he would judge him whether he would or not, and hang him as justice-deputy of the said marquis of Argyle; at which time the said George Campbell did rob and seize upon the sum of 1,000*l.* belonging to Archibald Lamont, brother to the said sir James; and having within a little time hereafter searched the said sir James for the said capitulation, finding that he had it not, and they considering the prejudice that might follow to them thereby, they caused the said sir James to subscribe a paper penned by the said George, declaring therein that his quarrel was unjust, and that he repented thereof, as also that he did pass from the capitulation; which paper with certain other articles thereip was subscribed by the said sir James, he being

compelled thereto for fear of death, having given notice at that very same time that his said friends and followers were cruelly murdered by them at Denoon, as is above-mentioned; after subscribing of the which paper, two days after the said sir James, his two brethren, and four friends aforesaid, were committed prisoners, in several houses, appertaining to the said marquis of Argyle, the said sir James remaining prisoner in the house of Dunstaffnagh for the space of four years, thereafter being carried to the castle of Inchoneill, where he remained prisoner for the space of two years or thereabout, until he was carried from thence to Sterling, by virtue of an order from us and our estates of parliament, they having not time to take trial of the matter at that time, by reason of our marching into England, sending the said sir James up to the castle of Sterling, for fear of the said Marquis's cruelty; in regard he often threatened, that if ever the said sir James came in his power, the world should not save his life, and that he repented nothing more, than that he took not that bloody knave's life, whilst he had him in his power; saying likewise, that all was but one fault: the which cruel crimes of oppression and others above specified, the said defendants, particularly the marquis of Argyle, one or other of them, were actors, aiders, abettors, contrivers, countenancers or promoters.

"Eleventhly, The said persons defendants, their cruelty against the said sir James is manifest, in so far as the said month of 1651, Donald Campbell sent John Campbell of Airdrich of the special causing, bounding out, and or under their command or direction, came accompanied with 30 men, all armed with guns, swords, pistols, and other weapons, invasive to the coast side of the sherrifdoms of Ane and Renfrew, where they heard that the said sir James had his residence, and did search the house of Southanon belonging to my lord Scimpell, and the house of Corsby belonging to the laird of Auchnanes, where the said persons did make search for the said sir James, two of them coming early in the morning to the said house of Auchnanes, the said Donald running up stairs with a drawn duk and bended pistol in either hand, making search through the whole house and beds, to have murdered the said sir James, who by providence was in the wood, not knowing any thing of the intended murder. And the said persons being disappointed of their intentions, did retire to their boats, the said sir James flying at that time to the Isle of Arran to shelter himself under the protection of the now duchess of Hamilton, who did reside there for the time. Like as immediately thereafter the said marquis of Argyle and his accomplices, failing of their said intended murder, the said Marquis did desire a warrant from the committee of parliament, in the said year, 1651, for apprehending the said sir James Lamont, intending thereby to prosecute the aforesaid murder; which warrant was then

\* From this ninth Article, it is well observed by Mr. Laing, "We may judge of the extravagance of the charge and of the fanaticism of the accusers."

refused to be granted to him : at least the said defendants, and particularly the said marquis of Argyle, or one or other of them, were authors, actors, aiders, abettors, assisters, contrivers, countenancers, of the aforesaid crimes of murder and oppression, and others aforesaid.

"Twelfthly, and further to evidence the aforesaid persons defendants, and particularly the said marquis of Argyle, their cruelty and oppression against the said sir James, the said Marquis in the month of 1647, or thereabouts, came to our house of Dunstaffneich, where the said sir James had been kept most unjustly and unwarrantably prisoner several years before, and sending to him the late deceased Archibald Campbell keeper of our said castle under the said Marquis, Colin Campbell of Lochmell, and Dowgall Campbell alias Mackcounachie of Inneraw, as commissioners, with certain proposals following, viz. First, that the said sir James should renounce and for ever overgive all right, title and interest he had to his own property, and his vassals superiority : and upon condition also, that the said sir James should under his own hand abjure Scotland, and never to be seen therein : Which being done, the said Marquis said he would give to sir James a considerable sum, threatening also that if the said sir James would refuse the said offer, so long as the said Marquis had an house in the world, the said sir James should be prisoner therein, and should torment him with pain and misery, until the marrow should rot within his bones. The said Marquis declaring also, that he hath already possessed himself of the said sir James and his vassals estates, which he said he and his should possess, in despite of those who would or would not. Whereupon the said sir James considering with himself, within some few months thereafter, that what a prisoner did was null in law, and being most desirous of his liberty, from so miserable and so long imprisonment, professed to be willing to grant some of the former desires, the said Marquis hearing thereof, caused carry the said sir James with a guard to the town of Innerarey, where the said sir James did write some few lines, the substance whereof contained the most part of the Marquis's desires. Notwithstanding whereof, and the said paper was delivered to the said Marquis, he persisting in his former cruelty and oppression, did send back the said sir James to prison, where he remained at our said house of Dunstaffneich, so that the said papers so subscribed and delivered to the said Marquis and George Campbell his justice and sheriff-deputy, for which they and their accomplices ought to be punished as oppressors and as actors and art and part of the aforesaid crimes, and all following upon the said writings and papers ought to be declared void and null.

"Thirteenthly, the said persons defendants, and particularly the said Archibald marquis of Argyle his friends and accomplices, persevering in their further oppression, in the month of 1649, years, caused the said deceased

Archibald Campbell, then keeper of our said castle of Dunstaffneich, under the command of the said Marquis, compel the said sir James to grant a band to the said Archibald, his heirs, executors, and assigns, for payment of the sum of 4,400 marks or thereabouts, for alledging four years entertainment in our said castle, where the said sir James Lamond was violently, traitorously, and illegally detained prisoner : Unto the which band the said Marquis be assigned, he did intend action thereupon before the English judges, and for that and certain other pretended debts, which were paid, the said Marquis took forth caption against the said sir James, intending thereby to prosecute his forethought cruelties and oppressions, and to incarcerate him, for obtaining his former designs. And so the said Marquis by acceptance of the said assignation, pursued thereupon his imprisonments, threatnings and others above and after specified.

"Fourteenthly, The said George Campbell justice under the said Marquis, still continuing in his former cruelties and oppression, in the month of 1647 years, or thereabouts, not only contrary to his said majesty's commission, but also contrary to the articles of capitulation, our laws and acts of parliament, having taken Patrick Lamond fiare of Escog, and John Lamond of Auchingyille out of the said castle of Escog, after they had rendered the said castle up to the capitulation above-mentioned, having detained their prisoners, the one in the castle of Carnick, and the other in the castle of Inchoneill, for the space of a year and three quarters, until the day of January, 1648 years. At the which time the said Marquis, and the said George his deputy, caused call a pretended court of justice at the said town of Innerarey : where having convened the said Patrick Lamond fiare of Escog, and John Lamond of Auchingyille, at the said town did call an assize, consisting of highland men, under power of the said Marquis, and his deputy their justiciary, being also their dependants and followers, and of the said George his making use of, for the most part, for murders and oppressions. Which assize having convicted the said Patrick Lamond fiare of Escog, and having absolved the said John Lamond, in respect to some favours due to them, the said George Campbell nevertheless caused the said pretended inquest thereafter to meet, contrary to the express law and act of parliament; the said George saying, that it was not fit that one young man should die alone : Conform to the which unjust and illegal command and direction, the aforesaid persons of the assize did meet again, and did convict the said John Lamond also, who by virtue of the said George's unjust and unlawful sentence, the said two gentlemen were hanged to death at Innerarey. Like as the said marquis of Argyle his counsellors, countenancing and promoting of the said cruel murders and oppressions, the said Marquis by himself, James Campbell of Ardninglas, and their accomplices, have still possess-

ed the lands of Escog, and Auchingyle, belonging to the said two murdered gentlemen; whereof they are yet still in possession to this same very hour: The said John Lamond leaving two children behind him, the eldest of them not two years old, to whom the said Marquis refused to give any supply or entertainment; they living still as yet upon the charity of the people. Like as the said Marquis of Argyle doth most violently, illegally and unjustly, possess the lands belonging to John Lamond of Auchinshelloch, who for age and infirmity, as said is, was cruelly murdered at the ladder-foot in manner above-written. At least the said persons defendants, and particularly the said Marquis of Argyle, George Campbell his justice and sheriff-deputy, James Campbell of Ardkinglas, or one or other of them, were authors, aiders, abettors, assisters, promoters, counsellors, contrivers and art and part of the said wicked murders, oppressions, burnings, robbery, and other deeds, and malvers actions above-written. And further, to manifest the said Marquis of Argyle, George Campbell his said justice and sheriff-deputy, and their complices, their cruelty and oppression, they or one or other of them in the month of 1613 years, having at that time murdered the said Patrick Lamond younger of Escog as aforesaid, they caused immediately thereafter bring before them Duncan Lamond of Stronulbanoch his uncle, an old man, being then prisoner at castle Lauchlane, to the town of Innerrairey; threatening him, that if he would not renounce and dispose his right of the whole lands of Keames, which he held of the laird of Lamond, then they would cause hang him, as his nephew was immediately before. Likewise for safety of his life, the said Duncan Lamond did grant a disposition of his said lands of Keaves to the said Marquis of Argyle, and did deliver to him the whole writings thereof, conform whereunto the said Marquis remains still in possession.

"And in like manner the said Marquis of Argyle, George Campbell his justice and sheriff-deputy, and their said complices, by their power and warrant have possess and do possess the lands belonging to the said James Lamond, viz. The lands called Archibald Roy-Stewart, the sixth mark land of Ochrechevine, the lands of Craignifroche: on which lands of Craignifroche the said Marquis had his own bowmen and heard, keeping thereon a number of his own proper goods several years: The said Marquis possessing also several other lands both in property and superiority belonging to the said sir James, the Marquis having no right thereto, but possessing the same by mere opposition. Of the which crimes of oppression and others above specified, the said Marquis of Argyle, George Campbell justice and sheriff-deputy to the said Marquis, James Campbell of Ardkinglas, officer under the said Marquis's command, and remanent defendants, were authors, actors, aiders, abettors, assisters, contrivers, promoters, and art and part. And further, the said Marquis of Argyle, George

Campbell his justice and sheriff-deputy, and their complices and remanent defendants above named, or one or other of them, in the month of

1648 years, or thereabout, did seize and apprehend the person of Dougall Mackdougall of Downnach, after he had surrendered the house of Dounolick, upon a subscribed capitulation under the hands of lieutenant general David Lesley, for his life, liberty and estate. Notwithstanding whereof the said Marquis and his said servant, or either of them and their complices, caused incarcerate the said Dougall Mackdougall in the house of Inchoneill, laying irons upon him; who being in miserable torment for the space of a year and a half and above, was enforced at the said Marquis's desire, to be free of the woful imprisonment and torture, to grant to him a disposition and renunciation of the said Dougall's lands of Barninggar; whereof the said Marquis is still in possession since the said year 1648. Of the which cruel acts of oppression, particularly the said Marquis of Argyle and George Campbell his servant, or one or other of them, were authors, aiders, abettors, assisters, countenancers, promoters, and art and part. And in like manner, Duncan Campbell of Ellangreg most treacherously, traitorously and perfidiously, after subscribing of the capitulation by him granted to the said sir James, his friends and followers, being a member of the conventicle and meeting at the aforesaid cruel and wicked murders committed at Denoon, was a main author, actor, abettor, assister, contriver and promoter of the said wicked murder committed there. Like as thereafter the said Duncan Campbell did take unlawful possession of Leymont Lamond of Cowston's lands of Stroan and Cowston, and also the lands of Trowstonne and Ardberg, belonging to the said sir James and Leymount. And also the said Duncan Campbell with certain of his complices, in the month of March 1646 years, came from his own house to the said lands of Cowston and Stroan, and there murdered early in the morning of men and children to the number of forty persons, viz. Archibald Lamond in Auchinfour, John Lamond there, ——— Lamond son to Ewen Lamond there a child, Archibald Lamond of Rive, Coll Lamond his only son a child, Ewen Lamond in Midtown, Duncan Lamond his brother, Donald Mackneill servant to the said sir James Lamond, Donald Macklauchlane in Kilnichael, Finlay Mackilbreid, Donald Mackilbreid his brother, two of the name of Mackalasters sons to Archibald Mackalaster in Killeenane; ——— Macklelland in Knocknilbe, Robert Moodie in Castle Towart, John Mackiller servant to the said sir James, Harry Lamond, Archibald Mackperson, John Michelson, John Leith, Dougall Leith, and several others. As also the said Duncan Campbell most traitorously, treacherously and perfidiously, with the said defendants his complices, were main actors, abettors, assisters, and art and part of the burning of the said sir James his house of Towart, taking



away the goods and plenishing therein, destroying of the said sir James his own men, tenants, vassals and servants; robbing and taking away of their goods the foresaid years 1645, and 1646, in one or other of the months thereof. Of the which treasonable deeds, murders, fire-raising, oppressions, robberies, and other cruel acts and malversations above-mentioned, the said persons defendants, and particularly the said marquis of Argyll, the said Duncan Campbell an officer under the said marquis's command, George Campbell sheriff and justice-deputy, or one of them, were authors, actors, aiders, abettors, assisters, contrivers and promoters of the same. And in like manner Robert Campbell of Auchinwilling, and remanent defendants aforesaid, or one or other of them, most basely and perfidiously, after the said capitulation, and contrary thereto, and our said laws and acts of parliament above-written, in month of \_\_\_\_\_ or one or other of the months above-specified, in the year of God, 1646, '7, 8, 9, 1650, 1, 2, 3, 4, or one or other of the said years, did violently reave and carry away several of the said sir James's household plenishing, and did destroy and cut down the whole plantings in and about the said sir James's house of Towart, orchards, parks and walks thereof; and did sell, use and dispose thereupon, burning spales and branches of the said trees, so cutted upon the roots of the same, that they might never grow thereafter; demolishing the walls of the said house, taking away the great hewed stones thereof, and building therewith houses to himself. And also being present at the said bloody and cruel murders committed in Denoon, and a main actor, aider, abettor, assister, counsellor and promoter thereof; as also was a main actor, aider, abettor, assister, and art and part of the great burnings, hair-ships and ryffs, committed by the said defendants, or one or other of them, of the said sir James his own men, tenants, vassals and servants houses, in the year of God 1645 and 1646, in one or other of the months thereof. Of the which cruel crimes, deeds and malversations above-written, the said Robert Campbell of Auchinwilling, and the said defendants, or one or other of them, were main actors, aiders, &c. And also the said John Campbell of Ardtariche and remanent defendants above-written, or one or other of them, in the said month of June 1646 years, most villainously, contrary to the said capitulation, was accessory to the burning of the said sir James's house of Towart, and in the said month was present at the meeting, and a main counsellor, aider, abettor or assister of the said cruel and bloody murders, committed at the village of Denoon. And to make the premises manifestly appear, the said John Campbell, by mere oppression having possessed the lands belonging to the deceased Duncan Lamond a murdered person, particularly the lands of Knockshaw, Inverchellane, the lands of Lettingall and Towart-ferming; and in like manner having by oppression also possessed himself of the lands

of Gortamleak, Kilmarnock and Bracklows, pertaining to the said sir James; taking away also, before the burning of his said house, several of the household-stuff and plenishing therein. Of the which deeds and other crimes above-written, the said John Campbell of Ardtariche, and remanent defendants aforesaid, or one or other of them, were authors, aiders, &c.

"And further Mr. Colin Mackleuchlane, minister at Lochgolished, being present at the meeting in the said village of Denoon, in the said month of June 1646, most villainously and treacherously, contrary to the said capitulation, was a main counsellor, actor, author, aider, assister, abettor, promoter, and art and part of the foresaid cruel murders, committed at the said village of Denoon. And further the said James Campbell of Ardkinglas officer under the said marquis's command, accompanied with his regiment in the low-lands, at the village of the Largs, in the month of \_\_\_\_\_ 1645, adding to his former cruelties, one \_\_\_\_\_ Lamond a beggar coming to the said James Campbell, and craving his charity, the said James caused apprehend the said beggar, and most cruelly caused murder and hang him, without any ground or warrant. Of the which cruel crime of murder the said James Campbell of Ardkinglas, and the said Defendants, or one or other of them, were authors, actors, abettors, &c. And moreover the said James Campbell of Ardkinglas, officer under the said Marquis's command, and remanent persons defendants aforesaid, intending never to put a period to their cruelty, so long as any of the name of Lamond and their friends and followers were left, in the month of \_\_\_\_\_ 1646, the said James Campbell being accompanied with his said regiment in the lowlands, there being brought to him by Angus Mackilvernock, Dermount Campbell, and the deceased Francis Campbell his brother, one John Macphatrick alias Lamond, the said James Campbell of Ardkinglas, and remanent defendants aforesaid, or one or other of them, caused cruelly murder and hang the said John Macphatrick alias Lamond, and that without any ground or warrant. Of the which crime of murder, the said Defendants, or one or other of them, and particularly the said J. Campbell of Ardkinglas, were authors, actors, aiders, abettors, assisters, or art or part.

"And also, Alexander Campbell of Pennymoir, with certain of his followers and complices, upon the month of \_\_\_\_\_ 1645 years, did seize and apprehend, in the Isle of Comeraw, one Robert Lamond merchant residenter in Ireland, from whence having come about his lawful occasions, to the said Isle of Comeraw, the said persons did most cruelly and villainously murder and shoot the said Robert Lamond to death, at the said Isle: of the which cruel murder the said Defendants, or one or other of them, and particularly the said Alexander Campbell of Pennymoir, were authors, actors, aiders, abettors, assisters, or art and part. And likewise the said George Campbell, justice and sheriff-deputy to the said mar-

quis of Argyle, still persisting in his wonted cruelties and murders, in the month of

1645 years, caused murder and hang one John Dow Maclauchlan of Artnadanne, at the said town of Inverary, and that without any ground or warrant. Of the which cruel murder, the said defendants, or one or other of them, and particularly the said George Campbell, were authors, actors, aiders, abettors, assisters, or art and part.

"And further the said Archibald marquis of Argyle, and George Campbell his justice and sheriff-deputy, likely never to make an end of their cruelty, in the month of 1647 years, or thereby, did most barbarously, cruelly, and unchristianly murder and cut off Hector Macallaster of and his two sons, at Lochhead in Kintyre, they being his majesty's free lieges, having received capitulation from the said lieutenant-general David Lesley, for life, lands, estate and goods; who according to the said capitulation did go home to their dwelling house, living peaceably; Notwithstanding whereof the said Archibald marquis of Argyle and the said George Campbell his said justice and sheriff-deputy, sending for the said Hector Macallaster and his said two sons, coming and fearing nothing, they most traitorously and villainously, contrary to the said capitulation, caused to murder and hang the said persons at Lochhead in Kintyre. Of the which cruel murders the said Defendants, or one or other of them, and particularly the said Archibald marquis of Argyle and George Campbell his justice and sheriff-deputy were authors; actors, aiders, abettors, contrivers, assisters and promoters, or art and part thereof. As also Archibald Campbell Evinnochlan, son-in-law to the laird of Otter, in the month of or one or other of the months respective above-written, in the year 1640, was accessory, art and part, and aider, abettor, and assister of the aforesaid cruel and wicked murders, committed at the lauds of Stronae, and at the foresaid village of Denoon, being accessory also to the robbing and taking away of the household-stuff and plenshing of the said sir James his said house of Towart, and of the burning of the same. Of the which cruel acts of murders, robberies, and fire-raising, the said Archibald Campbell was actor, author, abettor, assister, contriver, counsellor, promoter, and art and part thereof.

"And likewise the said marquis of Argyle and George Campbell his justice and sheriff-deputy, or one or other of them, in the month of or one or other of the said months above-written, in the year of God 1639, or thereby, caused seize upon and apprehend col. Mac Gillespy, alias Mac Donald, he being then his majesty's free liege, incarcerate him in our said house of Dunstaffeigh, where, he remained prisoner till the year 1645, at which time being exambet after the battle of Inverlochie he was taken prisoner in 1646 in the year 1647, being then in his majesty's service, and within few days or weeks thereafter, the said Marquis and the said George caused most cru-

elly hang the said col. Mac Gillespy, at our said house of Dunstaffeigh. And further, the said Archibald marquis of Argyle and George Campbell his sheriff and justice-deputy, or one or other of them, upon the month of or one or other of the months above-written, in the year 1647, or 1648, caused cruelly murder and hang Ronald Macdonnald son to the said col. at Inverary.

"And also the said marquis of Argyle and George Campbell his justice and sheriff-deputy, most treacherously, traitorously, and perfidiously, caused cruelly murder and hang, in the month of or one or other of the months above-written, in the year of God 1647, Alexander Maccoll Vickronnald alias Mackallaster in Kilmichel of Lairy, notwithstanding of a capitulation granted by the said marquis of Argyle and lieutenant-general Lesley, or one or other of them: Of the which three cruel murders immediately preceding, committed at Inverary and Dunstaffeigh, the said defendants, or one or other of them, and particularly the said Archibald marquis of Argyle, and George Campbell his justice and sheriff-deputy, were authors, actors, aiders, abettors, assisters, and advisers, countenancers, and promoters, or art and part.

"Of the which treasonable crimes, murders, robberies, oppressions, and all other crimes, misdeeds, and malversations above-mentioned, or one or other of them, the forenamed persons above complained upon, and every one of them, at least one or other of them, were actors, authors, abettors, assisters, contrivers, devisers, consulters, advisers, or art and part. And thereby they and each one of them, at least one or other of them, have incurred the respective pains and punishments prescribed by our said laws, and acts of parliament, viz. The forfeiture of life, lands, dignity, estates, and goods, the benefit thereof to be applied to our use, or such use as we and our said estates of parliament, or those impowered by us for that effect, shall appoint; at the least have incurred such other censure and punishment, in their bodies, names, fames, estate, and goods, as we and our said estates of parliament, or those impowered or authorized by us for that effect, shall think fit, to be applied, as said is, according to the nature and quality of their several crimes, misdeeds and malversations, done and committed by them, which ought and should be inflicted upon them with all rigour, in example of others.

"Our will is therefore, and we charge you that you lawfully summon, warn, and charge, he whole forenamed persons, defendants, abovenamed as followeth, viz. so many of them as are within this our realm of Scotland, personally, if they can be apprehended, and failing thereof, at their dwelling-places, and by open proclamation at the market-crosses of the head boroughs of our sheriffdoms, or other jurisdictions within the which they dwell; and so many of them as are without the same, by open proclamation at the market-cross of our

burgh of Edinburgh, pier and shore of Leith, upon three-score days warning, to appear personally before us and our estates of parliament, or those empowered or authorized by us for that effect, at Edinburgh, or where it shall happen then to be for the time, the day of with continuation of days to answer at the instance of our said advocate, for our interest, and at the instance of the said sir James Lamont, for himself, and in name and behalf aforesaid, for his interest above-written. That is to say, the said defendants, to hear and see it found and declared, verified and proved, in presence of our said estates of parliament, or such as shall be authorized by us and them, that the said defendants, and every one of them, at least one or other of them, have committed, and are guilty of, the crimes of high-treason, and other crimes, murders, robberies, oppressions, misdeeds, and malversations respective above specified, or one or other of them; at least they, and every one of them, or one or other of them were authors, abettors, contrivers, devisers, or art and part thereof: and the same being so verified and proved, to hear and see it found and declared, by us and our said estates of parliament, or those empowered or authorized by us for that effect, that the forenamed persons, and every one of them, have thereby incurred the respective pains and punishments prescribed by our said laws and acts of parliament; and to hear and see the sentence and doom of forfeiture, pronounced against them for the same, viz. the forfeiture and loss of life, lands, dignities, estates and goods, and the benefit thereof to be applied to our use, or such as we or our said estates of parliament, or those authorized by us for that effect shall appoint; at least to hear and see themselves adjudged to be censured in their persons, names, fames, estates and goods, as we and our said estates of parliament, or those empowered or authorized by us for that effect, shall think fit, according to the nature and quality of their several crimes, misdeeds and malversations, committed and done by them; and to hear and see the foresaid pains and punishments decreed to be executed, and inflicted upon them, with all rigour, in example of others, at the arbitrement and determination of us and our said estate of parliament, or those empowered and authorized by us for that effect: With certification to the disobeyers, if they be contumacious and appear not, we and our said estates of parliament, or those empowered and authorized by us, for that effect, will then instantly proceed against the said defendants, and every one of them, who does not appear, as rebels and traitors, and guilty of high-treason against us and our crown, and the estates of this our ancient kingdom; to the forfeiting of their lives, lands, estates and goods, to be applied, as said is; and that their absence and contumacy shall be holden as a manifest probation of their guiltiness, without necessity of any further probation. But if they appear and remain present at the whole diets of the proce-

dure, that then we and our said estates of parliament, or those empowered, and authorized by us for that effect, will proceed against the said defenders upon lawful probation, to the forfeiting of their said lives, lands, estates, and goods, to be applied as said is, or otherwise by punishing and censuring of them, according to the nature and quality of their crimes, misdeeds, and malversations, in their persons, estates, goods, name and fame, or some other manner of way, as we and our said estates of parliament, or those empowered or authorized by us for that effect, shall think fit, and appoint, conform to our sentence, decree, and determination to be given and pronounced by us against the said defenders therein, according to justice, to be called summarily without diet, table or continuation of other summons; because the aforesaid action is for crimes of high-treason, and other acts, misdeeds and malversations, committed and done by the forenamed persons against us, and the estates of this our ancient kingdom, and the public good and peace of the same; at least, whereof the forenamed persons defendants were aiders, abettors, assisters, consultants, devisers, advisers, or art and part. And therefore merits summary process, conform to daily practice, used in the like cases, and a deliverance granted by our committee of estates thereanent. Moreover, that you lawfully summon, warn, and charge to appear before us, and our estates of parliament, or those empowered or authorized by us for that effect, the said day and place, with continuation of days to bear, leil and soothfast witnessing, in so far as they know, or shall be asked at them, in the said matter, under all highest pain and charge that after may follow: as you will answer to us thereupon. The which to do we commit to you, conjunctly and severally, our full power by these our letters, delivering them by you duly executed, and indorsed again to the bearer.—Given under our signet at Edinburgh, the twenty eighth day of December, and of our reign the twelfth year, 1660.—*Ex deliberatione Commissionis Parliamenti sic subscriptur.*—*Jo. CUNYNGHAME.*—Edinburgh, Jan. 23, 1661. Signed by warrant from the parliament. *Sic subscriptur,* W. SHARP?

To which CHARGE the Marquis put in the following ANSWER.

I. "This libel may appear to any to be framed merely out of malice, because it takes in all things (either alledged, spoken, or done) since the year of God 1638, notwithstanding his majesty's royal father's and his own acts of oblivion and approbation.

II. "Because it does not so much as alledge any reason or motive for any thing hath been done, nor any end why, or to which any did drive, and so making any man who was engaged more malicious than the devil, and more unreasonable than the brute beasts.

III. "It repeats all that hath been done by kirk or kingdom, to be the marquis of Argyll's

deeds, though he neither was at the beginning of the business, nor very many of the particulars mentioned, as the narration of his carriage can shew; he shews both the reasons and ends of his doing all he did, being merely for religion, king and kingdom, according to the covenant, never pressing any thing earnestly, but for the covenant, nor opposing, but when it was refused.

1. "Mr. John Stewart's process will clear much of the falsehood of this point; for though such a discourse had been, it was but narratively of a debate, which was before the sitting of the Parliament, 1610. Wherein Mr. Alexander Henderson used those very words, though nothing to his majesty's disadvantage; and whether I related that debate, no man's memory can be charged with such a thing, after so long a time, and a clear act of oblivion of his majesty's royal father, 1611.

2. "This is a great mistake, when the Defender came to the house of Airlie, Montross had put a garrison in it for the use of the country, and when I came there with the country's order, Sibbald, who was in it, upon sight of my commission did presently leave it; and the earl of Airlie's own friends know, except what bushes were cut for hutting to soldiers, I had no use to cut the planting; and my stay there a few days was, expecting the lord Ogilby, whose friends were gone to him for that purpose, and the slighting of the house was then a favour, his order being more strict, and I believe his friends or tenants had no loss to my knowledge: As for burning the house further in Glenyla, the Defender knew nothing of it at all, until some days after it was done; and howsoever, it was included in the act of oblivion, 1611.

3. "Some men indeed, named under my command, lay at Dumbarton, by order of Committee and Parliament, whereby that garrison was loth to come abroad, and so many of them fell sick; whereupon sir John Henderson sent for me, that I might come to the castle and receive it from him upon honourable terms, which I did, and suffered him to make his own articles, for matter of honour; and I transported none of the cannon, but when his majesty was in Scotland, 1641, the duke of Richmond did give the Defender two cannon, this is known to many; this business is likewise before the act of oblivion, 1641.

4. "This is answered formerly, there is added a promise of mine, which needed not been mentioned, for I acknowledge my many obligations to his majesty, as strong as that promise could make it; and it were to wrong his majesty, to say he desired any promise to take away that, which his majesty commands so much in the large treaty, Scotland's desire of unity in religion, and uniformity in church government, as a special means for conserving of peace betwixt the two kingdoms; neither did Scotland at all join with any army in England, in league and covenant, but with the two houses of parliament.

5. "I neither did burn, nor give order to

burn the house of Menstre, though I had great provocations to it, the day before Menstre was burnt, the whole houses of two parishes, whereof I was only superior, was burnt, and many poor families put to extreme necessity by it; and a son of the earl of Stirling, who had Menstre in possession, by comprising, did concur with the actors of so cruel a fact, to poor people, that were not wronging them at all; himself, and his father before him, not only holding the same of me, but in effect without money; I and my father gave them the land; and when many years few duties had run on, I myself discharged that lady of the same, amounting to a considerable sum; so far do I abhor to be ungrate, though I have often met with such dealing; howsoever the 30th act 1647, for liberating the good subjects from the pursuit and actions of the rebels, civil or criminal, would suffice.

6. "This is answered formerly, and it is a most unjust calumny.

7. "There are three or four things in this Article, 1. Concerning the men in Loathhead and Dunavarty. 2. An old man begging his son's life denied. 3. Sending 200 men from Yla, to starve in Jura. 4. The carrying of col. Mac Gillespie from Leith road, being brought there by order of Committee of Parliament. To these, I desire it may be known, that in May or June, 1616, his majesty sent order to Alexander Mac Donald, and all under him, to lay down arms; of the which number these men in Kintyre were a part, who continued in arms contrary to his majesty's order. Next, I desire it may be known, they were lying under engagements not to have joined with Alexander Mac Donald; notwithstanding all which they were in arms, fighting against David Lesly and his party; yet, after Alexander was beaten, they refused to come to him, when other countrymen did; and went to the house of Lochhead and Dunabarty, out of which David Lesly took them, without any capitulation, and disposed of them as the council of war thought fit, which the Defender cannot be charged with. For the second; of the old man's request for his son, he never heard of any such thing before he saw this libel, so he conceives it to be a fiction; and just so of the third, for the Defender was never in Yla nor Jura, but with David Lesly, and he does not remember any colour for such a discourse. For the 4th, of col. Kittack's bringing to Leith road by order of either Committee or Parliament, is a mere fiction; he was taken prisoner in Yla, by the party under David Lesly, and delivered to me; and I put him aboard of captain Brown's ship, who undertook to deliver him at Dunstaffage, but captain Brown not being willing to lose the opportunity of a fair wind, did not go to Dunstaffage, but went straight to Leith road, and immediately gave me notice he had my prisoner aboard, whom I received from him, and sent to Dunstaffage; captain Brown I think lives at Weymes, who can declare this. One thing I shall add in general, that I thank the Lord, by

his grace helping me, I never took any man's life, but what was done in conflict, or by order of law, for notorious crimes, according to standing acts of parliament.

8. "It is well known I was in Ireland by commission for the getting assistance of the Scots army against those in arms in Scotland when his majesty came to the army before Newark, so that his majesty's declarations anent his majesty's gracious intention and resolution in coming to the Scots army, was sent both to the committee of estates of Scotland, and to the two houses of the parliament of England, before I came to Newcastle; his majesty's declarations were all recorded in the committee books, and printed, that his majesty came not with any intention to continue that unnatural war any longer, or to make any division betwixt the kingdoms, but to comply with his parliaments, and those intrusted by him, in every thing for settling truth and peace; and that he would apply himself totally to the counsels and advices of his parliaments: Upon which the committee of the parliament of Scotland, and the general officers of the Scots army, declared to his majesty himself, and the two houses of the parliament of England, their receiving his majesty was upon these terms: All this was done before the Defender came to Newcastle, after his majesty's coming there to the Scots army: In this article these, whom his royal majesty who then was, and his gracious majesty who now is, calls his parliaments, are called a factious party, and the Defender the ring-leader.\* It is said in this article, that I went to London, but omits to tell,\* by his majesty's and commissioners' order at Newcastle as one of the commissioners; and only carried instructions to the rest of the commissioners at London, for hastening the propositions: And likewise from his majesty was commanded to take the advice of the duke of Richmond and marquis of Hartford, anent what might concern his majesty; and particularly, if it was advisable that the Scots army should declare for his majesty, wherein they told me, and conjured me to tell it to his majesty, that it was the only way at present inevitably to ruin his majesty, and desired me to shew it to his majesty in these terms; that himself knew, neither the nobility nor gentry of England, who attended his majesty at Oxford, desired him altogether to prevail over his parliament by his sword, much less would they induce the Scots army to do it, that would make all England as one man against his majesty, therefore desired his majesty might by any means give way to the propositions, no other being left, which could be of advantage to his majesty. This very advice he delivered to his majesty at Newcastle, and told the same to his majesty, who now is, when he was in Scotland, and intreated the Lieutenant of the Tower of London to propose for me that the marquis of Hartford then living, might be examined in this, but he put it off from time to time, because of other great affairs in hand. It must likewise here be re-

membered, that at that time the two houses of the parliament of England was sitting fully and freely, and neither independent nor secretaries were able to carry one vote in the houses: And that the houses declared fully their resolution for maintenance of his majesty's person and authority; and such of them who attended his majesty most, were most for the disbanding of the Scots army, and his majesty's staying in England. Next observe this article, that it is a great mistake that any thing done at London concerning leaving the king in England, when the Defender was at London, that alledgeance of a discourse of mine in the committee of both kingdoms must be likewise forged; for as is said there was nothing moved at that time concerning his majesty's person, but merely for the army, and what concerned their satisfaction: so that I think the army, at least to my knowledge, emitted no such declaration. And though they had done it, I may say, I was never at any of their consultations; let them answer for their own deeds. And to what the parliament did, no man was ever yet made answer for such things, especially where the lawful king hath approved the parliament as a lawful parliament: No succeeding king will ever question his predecessor's acts, much less can a king in honour question any man for acting in a parliament, which himself hath approved. And of such nature are the most part in this libel; yea all of them except words before 1651. So I may say without offence, it were more for his majesty's honour and this kingdom, to think on a declaration vindicating the parliament of Scotland from such acts, than so unjustly to lay such foul things on them, and call them a factious party.

9. "It is to be observed, that the meeting of parliament, 1648, is called the estates of parliament met by his majesty's special authority, and it was so indeed, being one of the sessions of parliament, 1644. And in the first place there is a great mistake; for no proposition was made after the vote of parliament, the protestation itself will clear this, as is said in the former libel. I did not come to wait upon the committee of estates\* after Preston, but being called, and of necessity considering the times; neither went I upon to Mordington, neither did the invader Cromwell bring his army into Scotland, only that he resolving to propose some things to the committee, which the books will clear, he brought a small party with him to Lothian, and the stopping him from bringing in his army, and that he did not require pledges and the strengths of the kingdom; was thought a mercy at that time both to those who returned out of England, and all the nation: the margin doubtless in one branch is mistaken, at least as to me, no man can say he heard me; and neither his sayings nor doings was justifiable; for the truth is, he declared always he would not remove until he had Berwick; and the informers may imagine that was in my power, and he did remove; and when that was done, what instructions were sent to,

or with sir John Cheesly, were neither of my saying or writing.

10. "Being well known how active and instrumental the Defender was in every thing concerning his majesty's restitution to his crowns and royal authority, this clause or article is purposely for soyling his faithful service, but his majesty both knows and hath acknowledged the contrary of this by word and write. And for what concerns the marquis of Montrose's death, I neither consulted nor voted in the manner nor matter of it, though it was done in parliament. The next point in this article is corresponding with Cromwell after his majesty came to Scotland, which is most false; the like was said and recanted by Hamilton, who was a spy, and so was hanged at Sterling.—For any declaration to the West-kirk, I had no hand in it by word, writ nor message, but on the contrary I did deal with some ministers who came from the commission of the Kirk, to forbear pressing of his majesty: and where some of his majesty's bed-chamber desired that I might deal with his majesty to sign it, I told them I could not well press the king to a thing he said was so contrary to his conscience, seeing it reflected as he thought on his royal father; but to speak to the king I would not refuse, and if the king had done for a desire, I know no crime in it.

11. "There are some things in this note in the former libel, as joining with col. Trosketon in his march up Lochlomount, he knows, and I hope will not deny, that before I went with him, he told me that one Wakhsha was with him, whether from the earl of Glencairn himself, or from general Monk, concerning him, I do not remember; but he said the earl of Glencairn's business was as good as ended, and except I went with him, I could not but miss general Monk, who had sent for me, who was upon march, but that he was to meet with him, or hear certainly from him the day he was going; and all things did fall out accordingly, and being under a capitulation, I did not know why I might not be in their company, being resolved never to join with them in any action.

"As for having a company of foot under their pay, it is a mistake; the shire of Argyle trusted me with a watch for the shire of Argyle, which is most ordinarily in all places of the Highlands, in broken times; I made it known to general Monk, the poor country not being yet well planted after the burning, could not be able to pay cess and entertain the watch; he was pleased to promise once help for a hundred men, but I hope his grace will not say that ever he required any engagement of them as soldiers, nor ever employed he them at all; but because they did not oppose my son, he would not continue his assistance to the shire any longer, and spoke against me what his grace pleased for my dissatisfaction to the English.

"And for exchanging prisoners, it is a mistake; two men, who had been in Roseneath,

whereof I have charge, come from thence, shortly after my boat, in the twilight; going up Clyd to see general Monk, whom I had never seen before, I staid for them, thinking it had been some poor men flying from abuses, but coming aboard, they alleged they were men belonging to the earl of Glencairn, which I doubted; however, I chid them for coming that way, and for abusing the country where they came; I told them I would only leave them at Dumbarton until I returned from Kilsyth, where general Monk was, and in the meantime, that they might not suffer any thing, desired they might deliver any arms or money they had to a servant of mine, and all should be safely returned, as it was done at my return; and that they might not go as by way of any exchange, I would not suffer them to be enrolled by captain Thompson, who was exchanging some prisoners at my return, but got them from him, and sent them back, without any capitulation or exchange, though some men, I have forgotten who it was, about that time, took out of Dumbarton some of my boatmen, and returned them to me, without any treaty or capitulation for that effect. Because it is said the earl of Glencairn and Middleton were commissioned by his majesty; I can say truly, I never knew it, neither did any of their honours so much as by word, writ, or message, intimate so much to me; if they had, I am confident I had satisfied them concerning my carriage: and because of this, though there was some hazard in it to me, I did desire to meet with his grace the earl of Middleton, in the hills, but I got no answer; whether the messenger dealt faithfully I know not, but I believe his grace knew so much, and the necessary reasons I gave for the unreasonableness of that stirring, all which I am ready yet to declare, which doubtless will satisfy any.

"As for my taking upon me to bring off any, it is certain a mistake, for the person mentioned, John Mac Dowgal of Downoloth was not at all engaged in that service, when the earl of Glencairn and Middleton was in the fields."

*A short ANSWER to the LIBEL and DITTAY given in upon the 23th day of January.*

"Before I say any thing particularly, I must difference all can be said against me, first in these heads, and that is before his majesty's going out of Scotland, 1651, and since that Cromwell killed and took possession, until his majesty's happy return, in A. D. 1660.

"These again, which were acted before his majesty left Scotland, in A. D. 1651, of public concernment. 2. Of private, relating to particular persons: Now for these things, wherein I was an actor, in relation to the public concernment, I never acted without the approbation of parliament and general assemblies, ratified by his majesty's royal father and himself.

"And so the second, relating to particular persons, I never had accession to any thing

but what is warranted by act of parliament approved by his majesty and his royal predecessors, for my acting, after his majesty left Scotland, 1651, until his majesty's happy return, 1660. I was still a prisoner on demand, and had no agreement nor capitulation with the English, after his majesty went, until August 1652, being long after the deputies had taken the tender, and were gone to London, and all others in arms had capitulate, and that all the rest in Scotland were living peaceably at their own houses, except my kinsmen and vassals in Argyleshire, and the invaders in full possession of the power and government, and never did then capitulate but out of necessity.

In Answer to the particular ARTICLES of the  
LIEGE.

1. "The Commissioners for Conservation of the Peace, established by his majesty in the parliament, 1641, were to look to the keeping of the articles of the large treaty, whereof the endeavours to procure an uniformity in religion was one; and that Montross, and others, censured by parliament, should not have access to his majesty: And when these commissioners found these things slighted, and themselves unequal for such a burden, they met with the privy council, and they both, with the committee of common burdens, and all of them together, invited a convention of estates, and what they did ament their application to his majesty, and their desire of settling differences betwixt him and his people, and the league and covenant, is set down particularly in the ratification of parliament, 1644, which parliament was called and convened by his majesty's special authority, and which the said parliament was never disclaimed, but owned by his late royal majesty, and is the foundation of all that followed, even of the parliament 1649, which is not only approved by his majesty, but by it his majesty was called home and crowned, and from it the last committee which met (before this parliament) had then power; so all that was done in 1643, is fully ratified by his majesty in parliament.

2. "For this it was done in public parliament where all the same members who sat in 1643 were present, and it is likewise ratified by his majesty, and it was conceived inevitable and best for his majesty as matters stood for the time being, the least of two evils; and no man then imagined his majesty's person nor government in any hazard.

3. "No protestation 1648, against any act of parliament, the protestation itself will witness, and it was before the vote in parliament, the difference then may be mentioned, for it was not as it is reported commonly.

4. "The defender was pursuing no forces, but coming to meet with the committee 1648, after the defeat at Preston, being to consult what was best, fearing no harm (being at Sterling) was invaded by George Monro and others, and some of his friends who were with him were killed, and others taken prisoners.

5. "There was no invitation, so far as the defender knows, at all to Oliver Cromwell to come into Scotland, but on the contrary, an earnest endeavour was to keep him out by fairness, which could not be done by force, as the acts of committee and treaty at Sterling can shew: And for Cromwell's visiting of Edinburgh and Edinburgh castle, and of visiting of him in it, the defender was no keeper of the said castle.

6. "The defender acknowledges his oath, and he did not desert either his majesty or his army, but his stay behind his majesty in Sterling was by his majesty's own allowance, because of his wife's dangerous sickness.

7. "The defender's capitulation is not as labelled, for he agreed not to the government, though he agreed to live peaceably under the parliament of the commonwealth of England, and mention not without king and house of lords, which he particularly refused, as the paper which he was pressed to sign, yet extant, can shew; and never yielded to the same articles which he signed, while he was a prisoner in the hand, and at such a time when he could not make any escape, being heavily diseased, as Dr. Cunningham and many others know, who were with him the same time, it being, as in the Preface, in August 1652.

8. "He was hardly able to come out of his chamber when the forces went out of Argyleshire, so he was not present; but I think hardly could 200 or 300 men stop the passing of two strong regiments of foot, Overton and Read, and about 500 horse commanded by Blackmore, when that year all his hills and hogs were as passable as the best highways in that country; and though the defender had done it, it was but according to his articles, which he could not then alter; and sure no man can think it a crime.

9. "The defender did not accept any commission at that time, but refused to be in the parliament, and was resolved to forbear still, if necessity had not compelled him afterwards.

10. "Did sell some cannon to Dean, when he told him he would not suffer him to keep them.

11. "There is a mistake, or call it what you will, in this article, for colonel Cobbet had ended his expedition when some of his ships were broken in Mull, one company went by land and was not so much as challenged; and if the defender had not given some way to go through the country, it would have been accounted a breach of articles; or if he had staid upon free quarter in the country, until he had sent to Air for new provision, it would have ruined that part of the country, for it was not so much want of shipping, as provision, made him go the land way; and if I had betrayed him, I know no man could like a traitor, howbeit they had liked the treachery, neither was Glencarn in the fields, nor the earl of Middleton in Scotland at that time, nor had any man commission from his majesty, for any thing he knows.

12. "It is a general only, so it cannot but have a general answer, that is, most false.

13. "This Article is mistaken, it was at proclaiming Oliver that I was as present, being occasionally in town, I was commanded by general Monk to wait on the council, before I knew any intention of such a proclamation.

14. "This Article is mistaken also, I was desired by Aberdeenshire, to go for them to London in Richard's time. I had refused likewise to go then, as I had in Oliver's time, if I had not been driven by necessity to it out of respect to religion, my native country, and to preserve myself from utter ruin, not without hopes but something might have been thought upon for his majesty, because of the freedom of elections in England, and as nothing was so much as mentioned at that time to his majesty's disadvantage; so the breach was there made, by which his majesty entered by the Lord's blessing thereafter; this I told to several was most probable when I came back to Scotland, my endeavour to stop the Act of Union, until three things were first or jointly done, shews my resolution for my religion and country; the three things were, that our laws and judicitories might stand until they should be altered by common consent. 2. That our religion in doctrine, worship, and discipline, might stand according to the covenant. 3. That the assess of Scotland might be made proportionable with England. I did to several declare, the Union could not be without these, and I was told likewise, that these would never be granted; my own necessity was to get off a most unjust decret of great sums laid upon me, by that called the exchequer in Scotland, which was impossible for me to pay, this I shall make clearly to appear: and beside all this, my going was not until the invaders had been past seven years in possession by consent, and that all the lawyers did plead their authority and ordinances as laws.

15. "It was well known I was hard prest to accept that, and did it never, until the poor people in whom I was nearly concerned, were in great difficulties for want of justice; and I would not then embrace it, but with a protestation, though it was long after the invaders possession, and that there was no other visible power nor authority.

16. "I can say nothing to this, but it is a most false calumny, say it who will, and I hope when it comes to be particular in the circumstances it will appear to be so, for ever when the English were at Inverary, the parish minister Mr. Alexander Gordon, my own chaplain, in his family prayed constantly for his majesty, and myself in company did always pray for such whom we were engaged to, by either natural, civil, or christian bonds.

17. "I can say to this as to the former, and that it cannot be true, because that brake out only upon the earl of Calender's marching to the west, whereof it is not said he was pray;

and though it were true, all that business is approved in parliament, ratified by his majesty.

18. "This is a great mistake, I had no such precept, but I had by act of parliament of Scotland, the half of excise of wines and strong-waters in Scotland for payment to me, for a great sum laid out by me for the Irish army, and by my articles I was to enjoy my liberty, and these debts due to me; and when I craved performance of my articles, 1657, the Protector would not let me have the excise, but only so much yearly out of it, until I were satisfied, wherein I had not what I ought, so far was it from favour.

19. "I did never correspond with Richard Cromwell, nor Fleetwood, except in order to my own affairs, nor with sir Archibald Johnston, either to the prejudice of king or country, or to my memory at all after the committee of safety met.

20, 21, 22, 23, 24, 25. "To all these answers Arch. Kinglas had his commission as colonel from the parliament, or committee, and not from him, and if he pursued Lamond, doubtless it was as a rebel at that time to the estate of the kingdom, according to act and declaration of parliament, approved of by his majesty, and his royal father, and predecessors, so what Arch. Kinglas or any other did to Lamond, let them answer for what they did unwarrantably, it cannot reflect on him, but he hopes they will clear themselves.

26. "The defender was, in England when Lamond was brought out of his house, and knew nothing of the business, until he received letters shewing what had past, and that Lamond, had refused to return Alexander Mac-Donald, according to his capitulation, chusing rather to remain a prisoner with the defender, the paper itself may be found if he deny, whereupon he was detained prisoner, having no security to give; and having so often sworn and promised, and after failed, which will be shewn under his hand, and having murdered so many people, men, women and children, several of them after quarter given, beside the burning of many gentlemen his neighbours houses, and destroying their goods and their lands, and going in to Alexander Mac-Donald, notwithstanding he was in service against him with the defender, not having fairly exonerated himself; this can be all clearly instructed, and if this was not cause to keep him a prisoner, let any judge.

27. "He knew not nor remembers nor any such things, so it is but forged against him.

28. "He caused no such thing, it was a thing done for his own entertainment, and the defender being to secure Lamond for some just debts due to himself, the captain of Dunstaffage desired his bond likewise to be pursued in the defender's name, which the gentleman himself can shew.

29. "The Marquis is in possession of none of their lands to his knowledge; if he were, it is a legal civil process.

30. "He never knew any such thing.

31. 32, 33, 34, 35, 36, 37, 38, 39, 40, 41,



42, 43, 44." To all these let every man answer as he is concerned, as he hopes they will clear so; but this he must say for himself and his depute, that it cannot be said they murdered any of these men with their own hands, neither did they judge any man to die by the hand of justice, but such who were notoriously guilty according to standing law; and no man can justly say any man was ever processed before them who had received any articles, though it was never conceived by any judiciary in Scotland that any man taking a rebel could pardon him, except the person doer of it had particular warrant for that effect, otherwise the committee after Philiphaugh had been much to blame for ordaining so many to be processed, at which committee were the sentencing of such who died at Glasgow shortly thereafter, at which the defender was not present.

*The GRAND INDICTMENT OF HIGH TREASON, exhibited against the Marquis of ARGYLE, by his Majesty's Advocate, to the Parliament of Scotland.*

"Archibald, marquis of Argyle, you are indicted and accused, and are to answer at the instance of sir John Fletcher, knight, his majesty's advocate for his majesty's interest, that whereas by the laws of God, expressed in holy writ, by the laws of nations, by the common law, and by the municipal laws and practice of this kingdom; especially by the third act of the fifth parliament of king James 1, and by the first act of king James 6, of blessed memory, and by several other acts of parliament, all good and loyal subjects of this kingdom are bound and obliged perpetually to acknowledge, obey, maintain, defend and advance the life, honour, safety, dignity, sovereign authority, and prerogative royal of their sovereign lord and king, their heirs and successors, and privilege of their crown, with their lives, lands and goods, to the utmost of their power, constantly and faithfully to withstand all, and whatsoever persons or estates, who shall presume, press, or intend any ways to impugn, prejudice, or impair the same; and shall no way intend, attempt, engage, act or do any thing to the violation, hurt, derogation, impairing or prejudice of his highness's sovereignty, prerogative, and privilege of his crown, or any point or part thereof: and whosoever doth the contrary, to be punished as traitors, and to forfeit their lives, lands and goods. Likewise by the 25th act of the 6th parliament of king James 2, and by the 75th act of the 9th parliament of queen Mary; all rising in fear of war against the king's person or majesty; all attempting to raise any band of men of war, horse or foot, in warlike posture, without special licence of the king's majesty, and all suppliers of them, in help, redress or counsel, are punishable as traitors. Likewise by the 43d act of the 3d parliament of king James 1, and

by the 134th act of the 8th parliament; and by act the 10th, of the 10th parliament; and by the 205th act of the 14th parliament of king James 6, it is statute and ordained, that no subject, of whatsoever function, degree or quality, shall presume to take upon him publicly or privately to declaim, speak or write any purpose of reproach, slander, disclaim or contempt of his majesty's person, estate or government, or tending to the dishonour, hurt or prejudice of his highness, his parents or progenitors; or to meddle in the affairs of his highness, and his estate present, by-gone, or in time coming; nor to deprave his laws and acts of parliaments, nor misconstrue his proceedings, whereby any misliking may be moved betwixt the king's majesty, his nobility and loving subjects, under the pain of losing their lives, lands and goods, and others therein contained. As also all bearers of any such lensings, slanderous speeches or words, and concealers thereof, without apprehending of the authors (if it lie in their power), and reveal not the same to his majesty, or some of his judges or officers, and are mentioned in the said acts, are liable to the like punishment, as the principal offenders.

"Likewise by the 130th act of the 8th parliament of king James 6, it is statute and ordained, that none of his majesty's lieges and subjects do presume or take upon him to impugn the dignity and authority of the estates of parliament; or to speak or procure the innovation or diminution of the power and authority of the same, under the pain of treason.

"Likewise by the last act of the 3d parliament of king James 5, and by the 33d act of the first parliament of king James 6, all burning of houses or corn, and wilful fire rising, is declared treason, and the committers thereof are to be punished.

"Likewise by the 51st act of the 11th parliament of king James 6, it is statute and ordained, that the murder and slaughter of whatsoever his majesty's lieges, where the party slain is under the trust, credit, assurance and power of the slayer, all such murder and slaughter shall be treason, and the persons found culpable shall forfeit life, lands and goods.

"Likewise by the 37th act of the 3d parliament of king James 1, and by the 144th act of the 12th parliament of king James 6, all receivers, suppliers, or intercommoners with any traitors, are punishable by forfeiture, as the traitors themselves.

"Likewise by common laws and practice of this kingdom, all concealers and not revealers of any malicious purpose, of putting any violent hands on the sacred person of your dread sovereign the king's majesty, or purpose of killing or putting him to death; and all advisers, counsellors, siders, abettors or havers of any accession thereto, are punishable as traitors.

Nevertheless, it is of verity, that you the

said marquis of Argyle, having laid aside all fear of God, loyalty to his majesty, and to his royal Father, of ever blessed memory, natural duty and affection to your native country and country-men, and respect and obedience to the laws of all well-governed realms, the common-law, and the laws, statutes, acts of parliament and practices of this kingdom, and having traitorously intended and purposed the eradicating and subverting the fundamental government of this kingdom; at least the enervating, violating, derogating, or impairing the sovereign authority, royal prerogative of his majesty, and privilege of the crown: you, for carrying on of your said wicked purpose, having gathered and convoked together, in a hostile manner, a great many of your friends, servants, vassals, followers and other of his majesty's lieges, without any warrant, licence or command from his majesty; and therewith, under pretence of opposing such as by you were then nick-named Anti-Covenanters, and opposing the work of reformation (but who indeed were faithful assertors of his majesty's lawful authority), having marched to the ford of Lyon in Athol, in the month of 1640, there did in your tent, and in presence of a great many gentlemen and others publicly declare, that it was the opinion and judgment of many divines and lawyers, that a king may be deposed for desertions, venditions and invasions: and that howbeit that your words were *in abstracto* from any king, yet that the sense and meaning thereof might appear to be of the then king's majesty, your dread sovereign, you did subjoin and say to the late Mr. John Stuart, of Ladiwell; 'And, Mr. John, you understand *Latin*.'

"Likewise considering the condition of the kingdom, and the oppositions that a great many of the people were in to his majesty; particularly you the said marquis, and your three complices and followers; it is clear that the said words did not only reasonably reflect upon kingly government, as being subject to the people, who might in the cause aforesaid depose a king; but also it is clear, that your meaning also and intention thereby was, that the king's majesty, your dread sovereign, might be so destroyed: and the said treasonable speeches were so vented by you, of design, to usher in your many treasonable actions and practices done by you unto his sacred person, dignity, and authority; which, doubtless, did occasion and was mainly instrumental both in his deposition and cruel murder, which wicked and treasonable speeches the said Mr. John having thereafter reported, you most cruelly and tyrannously did prosecute him to death, as a leasing-maker betwixt the king's majesty and his good subjects, howbeit you could not but be conscious of the truth of what he had reported.

"Secondly, In prosecution of your aforesaid wicked and treasonable purposes, you having marched with the said forces to the house of Airlie, belonging to his majesty's right trusty

and well beloved cousin and chief counsellor James earl of Airlie, which was then kept for his majesty's service and authority; after you had forced the rendition of the said house, and destroyed the woods and plantings of the same, and wearied and destroyed the said Earl's friends and tenants, his majesty's good subjects, you did slight and demolish the said house; and to express your hatred to the said Earl, merely for his loyalty to his majesty, did seize, or by those under you did seize upon the house of Forthar in Glenlyla belonging also to the said Earl; and without any colour or pretence of offence did wilfully, most treasonably, and contrary to the aforesaid acts of parliament, raise fire in the said house, and thereby burnt and destroyed the same, and all furniture therein.

"Thirdly, In further prosecution of your treasonable plots and machinations against his majesty's person and authority, contrary to the aforesaid laws and acts of parliament in A. D. 1640; you in an hostile manner, did most treasonably lay siege to his majesty's fort and castle of Dumbarton, then fortified and kept for his majesty's service by col. Henderson, having his majesty's command and commission for that effect, and forced the said Colonel to render the said castle to you; out of which most treasonably you caused to be transported and carried away a great many of his majesty's cannon and other ammunition, appointed for defence and security of the said castle.

"Fourthly, Notwithstanding that his then majesty had in A. D. 1641 come himself in person to this kingdom, and most graciously condescended to all such acts as were required of him (how unjust soever) for securing and pleasing the people, and settling a peace; and that he had past the act of oblivion, to indemnify all such as had formerly been in opposition to his majesty within this kingdom, and that he had conferred upon you the title and dignity of marquis, as a mark of his royal favour, and put you in places of greatest trust in the kingdom; and that you had sworn and promised, in the abbey of Holyroodhouse, that in case any trouble or commotions should happen to be raised in England, by any of his discontented subjects against him, you would assist and defend him against all such, to the hazard of your life and fortunes: and that his majesty had parted from this his ancient kingdom, as was said and acknowledged by all, a contented prince from a contented people: yet nevertheless his majesty being forced and necessitated in anno 1642, to leave his parliament in England then sitting at Westminster, and his royal palace of Whitehall, and betake himself to defensive arms, for maintenance of his royal person, dignity and authority, and to protect the same against an army of sectaries, who maliciously, traitorously, cruelly and treasonably did invade the same; you, contrary to your allegiance, obligations and recent promise aforesaid, did by yourself, and complices, to fortify and strengthen the said rebels and sectaries, and in direct opposition to his majesty's person and dignity, call, or

cause to be called a pretended convention of estates in Anno 1643, without any shadow or colour of lawful authority; and you and they so convoked did take upon you the supreme authority of the kingdom, enter in league with his majesty's enemies, impose subsidies and excise upon the people, and raise an army of his majesty's own subjects, and therewith entered his majesty's kingdom of England, seized upon his majesty's towns and forts there; and killed, murdered, plundered and destroyed his good subjects, and in open and pitched fields fought for, with and in behalf of the said rebels, against his majesty's forces, which in effect was the rise and cause of all our subsequent ruins and disasters that befel his majesty or his loyal and good subjects thereafter.

Fifthly, In Anno 1645, after your return from England, to shew your implacable malice and hatred to all such as had any dependence upon, or affection to his majesty, you by yourself, and others under your command, or at your direction, did most treasonably raise wilful fire, and burn the house of Mrs. Lyfvented, inhabited by the countess of Sterling, and in her possession, and all the moveables and furniture, they extending to a great value; notwithstanding that the said countess was an honourable aged woman; and who, and her dearest husband, the earl of Sterling, by all observances and dutiful respects obliged you, so far as in them lay; thereby adding to the said act of treason, the height of oppression and ingratitude.

Sixthly, In the year 1646, you by yourself, or those under your command, or for whom you were answerable, or whom you might have stopped or impeded, did take in the house of Tawad, belonging to the laird of Salmond, and the house of Oscoge, belonging to Lamond of Oscoge, and after articles of capitulation drawn and subscribed by the laird of Ardkinglas, and other officers under your command, did most treasonably, in manner aforesaid, under trust and assurance, as is said, burn the said house of Oscoge, cruelly hang, kill and murder a great many of the said lairds of Salmond and Oscoge's friends and followers; as is more fully expressed in the summons raised at their instance and mine, for his majesty's interest against you, and which is repeated in a part of this article.

Seventhly, You having traitorously intended the utter ruin and extirpation of all faithful and loyal subjects, who had given testimony of their faithfulness to his majesty's dearest father, of ever-blessed memory; and having with an army of your accomplices, associates, vassals, servants, tenants and followers in Anno 1646, marched to Kentire, where a great many of his majesty's well-affected subjects of the name of Mac-Donald, Mac-Cow, and others, whose names are not particularly known, to the number of 3 or 400, had fortified themselves for their security, and against your oppression and violence, in the house of Lochthead and Donavertie: and you with the said forces having marched to the said house of Lochthead; the

gentlemen and others therein, without making the least opposition, and declaring that they had refuged themselves to the said place for shelter and protection, did render up the said house and themselves, upon assurance, that they might really and quietly return and live at their own homes; according thereto, they were dismissed and sent home, where they remained in a peaceable manner by the space of days. Notwithstanding, thereafter, you and the forces aforesaid having besieged the castle of Donavertie, during the said siege, there were several rendezvous appointed for the said gentlemen to make their appearance; which frequently they did, and were still dismissed, until such time as those who were within the said house of Donavertie had rendered up the said house and themselves, to be disposed of at the mercy of the kingdom, or pretended committee of estates: And that notwithstanding thereof, you and your said complices had most perfidiously, treacherously and treasonably, and for which also you are here indicted, slaughtered and murdered, or caused to be slaughtered and murdered, the number of 260 of them or 300, they being under your trust, assurance, credit, or power; and did dispose of the rest of them at your own hand, without any lawful warrant, to captains William Hay, and Archibald Campbell, to serve in the French wars. Then and hereafter you caused and appointed a new rendezvous of the said gentlemen, who were in the house of Lochthead, and their followers; who having appeared in frequent manner, you caused to be singled out fifteen or sixteen of the said gentlemen, who were that night sent to the said house of Lochthead, and the next morning brought forth by you, or such as were under your command; and most perfidiously, cruelly and inhumanly, without any order of law, or form of process civil or military, hanged and murdered. And to aggravate the said cruel and barbarous crime, it is of verity, that one of the said persons being an old man, and having one son, of age not above sixteen or seventeen years; the father immediately before his death did depone, that his said son had never done any crimes offensive all his life-time, but that he had still been at schools; and that some few days before, he had come from Glasgow, the place of his education, to visit his parents; and therefore did earnestly supplicate, in regard of his innocence, his life might be spared: Notwithstanding you, and the bloody actors of your purposes, were so unmerciful, as not to hearken to the said so just desire of the said dying old man, but forthwith the said young innocent boy was cruelly also hanged to death. Likewise not content with the aforesaid unheard-of horrid acts of cruelty, you in the month of 1640, or one or other of the months thereof, by yourself and followers, or such whom you might have stopt or left, caused to be transported from the Isle of Ila, to the Isle of Inwa, to the number of two hundred persons of all sexes and ages; where all means of livelihood and

substance being withdrawn from them, they in a most miserable manner were pined and starved to death by famine, except some very few, who had out-lived the rest, and were relieved and carried out of the said Isle by boats accidentally coming by : Likewise the person of *Macdonald, alias Coalmac Gillespy, or Coawkittoche*, being, in Anno or ordained by the parliament, or committee of estates thereof, to have been brought from prison out of the house of *where he then was*, and there had been kept by you and others in your time, many years before, to Edinburgh, that the causes for which he had been kept, and so detained in prison, might have been known ; and he having for that end been brought in a ship the length of the road of Leith ; you, for preventing such information of your cruelty and oppression exercised towards him, and many of his friends and relations, which he was able to have given and made out ; you in manifest contempt and scorn of that committee of parliament, under which you yourself acted, caused to take the person of the said *Coawkittoche* forth of the said ship, and after you had carried him to your own lands and bounds, cruelly caused to hang him to death.

Eightly, Notwithstanding of the manifold acts of mercy and favour, dignity, honour and trust conferred upon you by your then dread sovereign, for reclaiming of you from your disloyal and treasonable practices, plots and machinations, against his sacred person, dignity and authority ; he being sore pressed and reduced to great straits and extremities by that army of sectaries before-mentioned, with whom you had formerly joined, as is said ; and having in that exigence and difficulty rather chosen, from an innate principle of affection of his countrymen, to cast himself over in the hands of the army of his majesty's subjects of his ancient kingdom of Scotland, for shelter and preservation of his royal person ; nevertheless, you, the said Marquis, being the chiefing-leader of that factious party, who then swayed the estate and affairs both in council and armies in the said kingdom, did so contrive and complot, and by your influence so prevail, that after all fair offers made by his majesty, and his earnest desire to have come and lived in Scotland, until such time as all differences in both kingdoms had been settled : That a pretended act of parliament was made for abandoning and leaving his majesty in the disposal and mercy of the inveterate enemies of his majesty and government, the said army of sectaries. And that your acting in, and accessions to, the said affair might be the more evident and clear, and to aggravate your eminent and singular guilt therein, you yourself went to London, where you basely, under pretext of satisfaction for the arrears of the said army, raised by the pretended authority of the pretended convention of estates, in Anno 1643, as is said, treacherously and treasonably gave up, at least condescended to the upgiving of your dread

sovereign and master, and that as being impowered so to do by the kingdom of Scotland ; and thereby did rub an indelible mark of reproach and infamy upon the whole nation to all generations, so far as in you lay. And further, to clear your aforesaid treasonable dealings, accessions to, and correspondency with that infamous party of the said army, who carried on the said abominable and detestable act, you being at the same time in a pretended joint committee of both kingdoms, while, as the English therein did call in question whether the Scots army would sincerely concur with them in their said treason and treachery : you, after many arguments used in their favours, earnestly desired them to have patience for a little time, and it would appear by somewhat of the officers of the army, how far they intended to concur and go along with them. Likewise within a few days after there was a vindication and declaration emitted in name of the said armies, whereby it was held forth, that in case his majesty would not condescend to all the desires of both kingdoms, which was no less than the divesting of himself of all regal power, civil, ecclesiastical, or military in state, church, or armies, they would deliver him up ; which immediately after the payment of 200,000*l.* basely and treasonably was done by you and them.

Ninthly. In Anno 1643, his majesty's royal father being, contrary to all laws, divine and human, most unchristianly, barbarously and treasonably detained and kept prisoner within the Castle of Carisbrook, in the Isle of Wight, by a party of factious, disloyal and rebellious sectaries ; the estates of parliament then convened by his majesty's authority, having taken the said inhuman, treasonable and cruel usage into serious consideration, they found this kingdom engaged in honour and duty to resent so horrid and unheard-of cruelty and lese-majesty, and obliged to use their utmost endeavours to relieve him out of the hands of such wicked usurpers, and to restore him to the exercise of his royal authority in freedom, honour and safety ; for effecting thereof, after all other fair ways essayed, upon mature consultation had, they found that the only probable means was the raising of an army of his majesty's good subjects, which was accordingly statute and ordained by act of the said parliament. Against the carrying on of which, so just, laudable and necessary a duty, you did most violently and eminently oppose yourself, not only by arguing, voting against, and using all other means in your power to obstruct the same ; but also, after the same was past into an act of parliament, you did most contemptuously and treasonably publicly dissent from, and enter a Protestation against the same ; and not being therewith content, after the said army in pursuance of their duty and allegiance had marched into the said kingdom, you shortly after in the month of *in contempt of the aforesaid authority*, and against the preservation of his majesty's person and authority, did most

treasonably convocate an army of factious, seditious and rebellious subjects, in opposition to the said army, and therewith committed divers and sundry outrages, murders, slaughters, plunders and vastations upon the persons and estates of divers of his majesty's good subjects, and therewith invaded several of the cities and castles, seized thereupon, and upon the magazine with arms and ammunition therein: And at that time the said hellish army of sectaries of England, being upon the borders, you fearing and apprehending that the force and power raised by you should not be able to withstand his majesty's good and loyal subjects who were then risen and ready to rise in arms for asserting and vindicating his majesty's just authority, you did most basely, treacherously and treasonably call in to your aid and assistance the said armies of sectaries. Likewise you yourself went in person to the house of Mordington, within a mile of the English borders, to the end aforesaid; and you did meet with the vile usurper Oliver Cromwell, commander of the said army, with whom you had several private meetings and consultations, and thereby persuaded, and so prevailed with the said Traitor, that he thereafter marched with the said army to Edinburgh and the places thereabout; and which march and in-coming of the said Oliver you might have undoubtedly hindered; in so far as it can be made appear by clear proof and testimonies of famous persons, That it having been complained upon to him at the said house of Mordington, that by reason of his being there with such a great number of soldiers, the lord Mordington's tenants would undoubtedly be ruined; he the said Oliver made answer, That he could not help the same, for his staying and going did depend upon you, and that he was ready, if you desired, to march back to England. At least, you did contrive, advise or consent to the raising and convocating of the said seditious, factions, and rebellious armies; at least was one of the number yourself, and with, and assisting to them in arms; at least, did vote, counsel or persuade the in-calling of the said army of sectaries: And they being so brought in, you did countenance, assist, concur and consult with them, or their commanders, or some of them, in public or in private at Edinburgh, and in the Canongate, in the house called Lady Home's Lodgings, and in divers other places. As also, you did most villainously and traitorously contrive, counsel or vote for the drawing up of a letter directed to the Traitor and abominable Usurper, wherein you and your complices did engage yourselves, in the name of the kingdom of Scotland, to employ your utmost endeavours, that none who have been active in, or consenting to the engagement against the said sectaries, or had been in arms at Stirling, or elsewhere, in maintenance or pursuance of that engagement, should be employed in any public place or trust within this kingdom whatsoever. Without advice or consent of the kingdom of England; as the said letter, dated the 8th day

of October, 1648, more fully bears. As also, you did draw up, at least did counsel, advise or vote, to the up-drawing of certain instructions given to sir John Chiesly, who was sent by you and your complices, as commissioner to the pretended house of parliament of England, dated October 17, the year aforesaid; wherein you desire, that the noblemen, gentlemen of quality, and considerable officers of the army, that went into England, under the command of duke Hamilton, and who were then prisoners, might be kept as pledges for the peace of that kingdom; by which not only have you endeavoured most unnaturally to enslave your fellow-subjects and countrymen to the power of strangers, but most treacherously and treasonably, as an unworthy, ungrate patriot, done what in you lay to destroy the life of your own dread sovereign, and the royal authority in him and his succession, and to subject the honour, liberty, power and government of this his majesty's ancient and free kingdom, to the command, lust and tyranny of foreign Traitors and Usurpers. As also, you, upon the 4th day of May thereafter, having taken upon you most treasonably the supreme authority of this kingdom, gave warrant under your hand for issuing out a Proclamation, declaring that the wives, children and families of James lord Ogilvy, lord Ren, Lewis marquis of Huntley therein designant, Lewis Gordon son to the marquis of Huntley, John now earl of Middleton, therein designant, John Middleton of some-time designant general-major, should be no longer under the protection of this kingdom, and that such course should be taken for transporting them out of their country to foreign parts, as the estates of parliament, or their committee, should think fit.

Tenthly, After his majesty's dearest and most royal father, of eternal and most blessed memory, had been most unchristianly, inhumanly, horribly and barbarously murdered, by the said abominable traitor and usurper Oliver Cromwell, and his wicked complices, the devilish and treasonable courses, plots, contrivings, and actings of yours did not yet terminate: For there being some motions for address to be made to his majesty, by some of his good subjects of this his ancient kingdom, as undoubted and rightful successor to his deceased royal father in the imperial crown thereof, that his majesty might come to his said ancient kingdom, for exercising his royal power and authority; the said motion and purpose being so just and lawful, you, notwithstanding of your great impudence and daring, always fearing, that a direct opposing thereof would prove altogether ineffectual, you, in a most indirect way, procured the application made for inviting his majesty, to be so clogged with limitations, restrictions and conditions, to have been condescended to by his majesty, before his admission to the exercise of his royal government, as were most destructive to his majesty's dignity and authority, and most derogatory to most ethical government; as are more fully expressed

in the several commissions, instructions and addresses sent and made to his majesty to that effect, and public proclamation of his majesty at the mercat-cross of Edinburgh, by you and your complices, commissioners at Breda; all which are here repented as a part of the libel, *breuitatis causa*. And his majesty, upon consideration, that the said unreasonable, unlawful and treasonable conditions were exacted of his majesty by you, and a few number of factious subjects, who had, by the assistance of the usurper and tyrant Oliver Cromwell, thrust yourself into the government of his majesty's ancient kingdom; and trusting to the fidelity, the loyalty and good affection of his other good subjects, having, notwithstanding the said hard and unjust conditions, resolved to cast himself upon the loyalty and affections of his other good and faithful subjects; you, to obstruct his majesty's purpose and resolution, yea, and so far as in you lay, to fright and terrify him therefrom by you and your complices cruel execution upon the marquis of Montross, his majesty's commissioner, and who represented his person in his said ancient kingdom; caused to be most horribly and inhumanly murdered the said Marquis, at the Mercat-cross, upon the 21st day of May, 1650, with all the circumstances of disgrace and dishonour: which so much reflected upon his majesty's person, dignity and authority, and upon the honour of all true nobility; and is so recent and fresh, with detestation, in the memories of all good subjects and generous spirits, at home and abroad, that it is not fit to be mentioned or repeated here. But his majesty still continuing in his former purpose and resolution, and after a most tedious and dangerous voyage at sea, having, by the providence of Almighty God, happily and safely arrived in his said ancient kingdom; shortly thereafter, the cruel bloody murderer and usurper Oliver Cromwell, in pursuance of his majesty, with a powerful army of sectaries, by sea and land, invaded his said majesty's ancient kingdom. For opposing of whom, an army being raised; while both the said armies were in the field, you most treacherously and treasonably kept correspondence, and had intelligence with the said usurper, by writing to, and receiving letters from him, without his majesty's private consent or warrant; at least, by sending to, and receiving messages from him by word of mouth. And further, to advance the designs of that abominable regicide, after you had by your indirect means, plots, advices or contrivances gotten his majesty removed from his army at Leith; you by your influence upon a few number of the commissioners of the General Assembly, yourself being one of the number then met at St. Cuthbert's church, commonly called the West-Kirk, prevailed so, that for the weakening of the hands of friends, and strengthening the enemies, there was in a most clandestine and surreptitious manner an act, as of the said commission of the Kirk, made, printed and published; wherein, besides many re-

proachful and slanderous expressions of his majesty and his royal ancestors, more fully expressed in the said pretended act, bearing date August 13, 1650, it was declared, that you disclaimed, and would not own his majesty's interest, because of his refusal to subscribe and emit a declaration offered to him; and which declaration was contrived and drawn up by you, and "contains many scandalous, seditious, imperious, reproachful and treasonable expressions, not only against his majesty's authority and government, but also against his royal father and mother, and others his royal progenitors, as is more at large expressed in the aforesaid act of the date above-written, and declaration bearing date the day the same year: of which declaration there needs no more be said, than that the circumstances by which his majesty was enforced to sign the same, are enough known to the world; and that the worthiest and greatest part of his majesty's ancient kingdom did even detest and abhor the evil usage of his majesty in that particular, when the same tyranny was exercised there by the power of you and a few evil men your complices, which at that time had spread itself over his majesty's kingdom of England; at least you and your complices did ratify and approve the said act of the West-Kirk, and consent thereto; and at least you did deal with, and press and force his majesty to sign and subscribe the declaration aforesaid; at least you were author or contriver, adviser or counsellor, persuader or voter, or assenter, assister, aider or abettor of the aforesaid restrictions, limitations and conditions, and of the aforesaid murder of his said majesty's commissioner, and manner thereof, and of the keeping of the said correspondence with the said invader and usurper, and of the said act and declarations, or any or other of them, or all or part thereof, or one or other of them.

"Eleventhly, After it had pleased God to suffer that monster of men and cruel regicide, Oliver Cromwell, so far to prevail against all his majesty's endeavours for recovering his just right and interest in this and in his other kingdoms, and over all the armies and forces raised by him for that end, so that he was necessitated to refuge himself with foreign princes and estates: howbeit, at his majesty's coronation, you, in the presence of God, and a great many of the nobility of this kingdom, and others therein convened at Schoon, the 1st of January, 1651, did swear to be faithful to the crown, and true liege-men to his majesty: yet nevertheless, contrary to the said oath, and notwithstanding the many favours, honours, benefits, and acts of indemnity conferred upon you, and contrary to the laws and acts of parliament, as is expressed; you did most perfidiously, ungratefully and treasonably, in anno 1653, or 1654, not only according to your bounden duty, not rise in arms, and join with the earls of Glencairn and Middleton, who were commissioned from his majesty for hindering the further progress of the usurpers, and expelling them

forth of this kingdom; but did in open hostility join with the said usurpers their forces; especially with the colonels Overton, Cobbet and Twisleton; at least with the said colonels Cobbet and Twisleton; at least with colonel Twisleton, when he was in the highlands in opposition to the said earl of Glencairn; at least joined with one or other of them in counsel; did take and relieve prisoners, did furnish several pieces of great cannon, to the number of fourteen, in anno 1653, or 1654, to colonel Aldred, then governor of Air: which cannon, or a great many of them, were taken out by you of his majesty's castle of Dunbarton, at the time and in the manner above expressed. And likewise you did take pay from the said usurpers for a company of foot under them and in their service, thereby openly and clearly making it appear what you did intend by all your more covered and private machinations, plottings and treasonable actings against his majesty's dearest father and himself. Likewise to make it appear what intimacy and power you had with the usurper, you not only did term and call the actings of his majesty's forces against you and the usurpers, rebellion, but also you in anno 1654, did take upon you power to bring off such as were in that service, and to give remissions therefore under your own hand; particularly to John Mac Dowgaw of Dunolick, as the same under your hand, the said John will verify.

Twelfthly, The said Oliver Cromwell, that monster of men, vilest of traitors, most cruel murderer, bloody tyrant and usurper, having reached, as he thought, the end of all his devilish plots and treasonable machinations, by usurping the dominion and authority of his majesty's three kingdoms, and settling the same, so far as in him lay, upon him and his family; you conceiving the same so fixed and riveted, that in human probability it was not possible to be removed or shaken; that you might avowedly reap the fruits of your former more covered, vile and damnable plottings, contrivings and actings for the said arch tyrant and traitor, you then pulled off and laid aside the mask of pretended loyalty and religion, under which you had all along formerly lurked, thereby having deceived and cheated a great many of his majesty's good subjects from their due allegiance and loyalty under hypocritical fair pretences of your affection and zeal for religion, prince, and country, to the utter ruin (if not of souls) of many of their bodies, estates and fortunes; and did openly, in face of the world, discover yourself in your own colours, appearing in a thing professedly and publicly in behalf of the said usurper against his majesty's person and authority: in so far as in the month of . 1657, after the decease of the said usurper, the succeeding usurper, his son, being most treasonably and tyrannically proclaimed Chief Magistrate and sole Protector of all his majesty's dominions and territories thereto belonging, at the mercat-cross of his majesty's cities of Edinburgh and Dunbarton, you having apparently,

for such like services done or to be done, received from the said usurper Oliver one precept due upon the Exchequer of Scotland, for payment to you of 12,000*l.* sterling, or thereabout, did with your personal presence countenance the said tyrannical and treasonable proclamation; thereby, so far as in you lay, divesting his majesty of his just and royal interest and right, and establishing the same on the persons and families of the said usurpers. Likewise not long after the said usurper, the more to establish himself in his usurped government, having called a pretended Parliament, consisting of a pretended new-coined house of peers, and certain persons of his majesty's three kingdoms as a house of commons to sit in Westminster; you did procure yourself elected commissioner for the shire of Aberdeen, at least did accept of a commission from them; albeit both by the nobility of your birth, and your non-residence within the said shire, you was in law incapable to be so elected; at least ought and might have refused to accept any commission. Nevertheless having voluntarily, and of your own accord, embraced the said charge and employment, you thereupon took journey, and went to London, and most basely, perfidiously and treasonably, sate, voted, and otherwise acted in the said usurper's pretended Parliament, by whom his majesty's right and interest was disclaimed and abjured, and the same owned only in the said usurper's person as a member of the said pretended house of commons, to the high indignity and contempt of his majesty's sacred person and authority, the utter destruction of monarchical government, the dishonour of this kingdom, and the great disgrace of your own family and posterity.

Thirteenthly, You the said Marquis, to make it further appear to the world, that it was always your purpose and intention to destroy his majesty's authority and government, and to oppose his restoration to his just right and interest to his three kingdoms, at a provincial assembly holden at Innerary a little after the defeat of his majesty's army at Worcester, the ministers praying for his majesty after the accustomed manner, you did most villainously and treasonably rebuke them, saying, 'That they were but fools to pray for a malignant and wicked king, whom God had rejected, and would never restore him again;' or some such like words to that purpose. And also, you being at London, in the time of the usurper Oliver, you said in presence of divers persons of quality, 'That you wondered how people could be so mad, as to call home a family whom God had rejected,' or such words to that purpose: likewise after your home-coming to Scotland, yea, openly in a public meeting at James Maufertonne's, in Niddrey's Winde, in presence of several noblemen and gentlemen, you boasted, 'That you would own any thing you had done in these things by-gone; and that if it were to do, you would do it again; howbeit you had known that all that had, would have come:' Thereby presumptuously taking upon

you, by outward success, to give judgment upon the hidden and secret counsels and determinations of Almighty God, and thereby to alienate the affections, duties, and allegiance of his majesty's good subjects, and to harden and confirm others, such as are otherways disposed in their wicked courses towards his majesty's person and authority.

Lastly, That your monstrous and execrable treason may appear to all the world, it is of verity, that in the year 1648, at a private conference betwixt you, Oliver Cromwell, and col. Ireton, the said Oliver complaining of the many difficulties that attended their affairs, by reason of the divers designs which his majesty had on foot from time to time against them; you the said Marquis made answer, 'That their danger was great indeed, in regard that if any of these designs should take effect, they were all ruined.' And thereupon gave your positive advice, that they should proceed to the questioning of the king for his life; assuring them, that they could never be safe until they had taken away his majesty's life. At least, you did know of the horrible and treasonable design of murdering his said majesty; and did most treasonably conceal, and not reveal the same till after the said horrid deed was committed, and so past prevention or remedy. At which time, in anno 1649, publicly in the face of the pretended Parliament then sitting, you said, that the usurper Cromwell had told you, 'That England and Scotland, would never be at peace, until the king were put to death.' By all which particulars respectively, above rehearsed, it is clearly evinced, that you were, and are author, contriver, deviser, consulter, adviser, of all or part of all the aforesaid crimes of treason, and other above libelled, or other of them, in manner above declared. And thereby has incurred the pains and punishments of high treason, and others contained in the laws and acts of parliament above-written; which must and should be inflicted upon you with all rigour, in example to others in all time coming.

(*Sic subscrib.*) Jo. FLETCHER.

Jan. 31. Ordered, That the above-written Dittay be given to the marquis of Argyle, by a herald or pursuivant, and he to answer thereto, upon the 13th day of February next to come.

*The Marquis of ARGYLE'S PETITION to the Parliament of Scotland, craving Recognition of his Case, containing many mighty reasons urging the necessity thereof. Presented to the Parliament, Feb. 12, 1661.*

To my Lord Commissioner his grace, and honourable Estates of Parliament. The humble PETITION of Archibald Marquis of Argyle,

Humbly sheweth; That for as much as the Petitioner can with a safe conscience affirm, and solemnly protest, that whatever his actings or accession has been in relation to public business since the beginning of the troubles, till his majesty's departure hence in the year 1651,

though he will not purge himself of errors, failings, and mistakes, both in judgment and practice, incident to human frailty, and common to him, if not with the whole, at least with the greatest part of the nation; yet in one thing, though he were to die, he would still avouch and retain his innocence, that he never intended any thing treasonably, out of any pernicious design against his majesty's late royal father of ever-glorious memory, or his present majesty (whom God may long preserve), their persons or government; but endeavoured always to his uttermost for settling the differences betwixt their majesties and the people. And as to any actings before the year 1641, or from the said year, till his majesty being in the parliament at Perth and Sterling, your petitioner did with a full assurance rely upon his gracious majesty, and his royal father, their treaties, approbation, oblivion, and indemnity, for what was past, and firmly believed that the same should never have risen in judgment, or that the petitioner should have been drawn in question therefore. And during his majesty's absence, and being forced from the exercise of his royal government by the late usurpers, and long after that the nation, by their deputies, had accepted of their authority and government, and they in possession, the petitioner was forced to capitulation with them, being in their hands, and under sickness, and the same was, after all endeavours used, according to the duty of a good subject; and upon the petitioner's part, so innocent and necessary for self-preservation, without the least intention, action, or effect to his majesty's prejudice: that albeit upon mis-information (as the petitioner humbly conceives) his actings and compliance both in their designs and quality have been misrepresented, as particularly singular and personal, stating the petitioner in a degree of guilt beyond others, and incapable of pardon; the same have so far prevailed upon his majesty, as to cloud and damp the propitious and comfortable rays of his royal grace and favour, and have strained his gracious inclination beyond its natural disposition of clemency expressed to his other subjects, to commit the petitioner's person, and give way to the trial of his carriage and actings: yet so firmly rooted is the petitioner's persuasion of his majesty's justice and clemency, and that he intends the reclaiming, and not the ruin of the meanest of his subjects, who retain their loyalty, duty, and good affection to his person and government; that upon true and right representation of the petitioner's carriage and actings, he shall be able to vindicate himself of these aspersions, and shall give his majesty satisfaction; at least so far to extenuate his guilt, as may render him a fit object of that royal clemency, which is of that depth, that having swallowed and past by, not only personal but national guiltiness, of much more a deeper dye than any the petitioner can be charged with, or made out against him; and so will not strain to pass by and pardon the faults and failings of a person, who never acted but in



a public joint way, without any sinister or treasonable design against his majesty or his royal father; and against which he can defend himself either by acts of approbation and oblivion *in terbo principis*, which he conceives to be the supreme, sacred, and inviolable security, or which he was forced to, much against his inclination, by an insuperable necessity. And albeit his majesty's grace and favour is strictly tied to no other rule but his royal will and pleasure; yet his majesty's so innate, essential, and inseparable a quality of his royal nature, that the petitioner is persuaded in all human certainty, that the leaving and committing to his parliament (as is expressed in his majesty's declaration of October 12th last by-past) the trying and judging of the carriage of his subjects during the late troubles, as indeed it is in its own nature, and ought to be so accepted of all, as an undoubted evidence of his majesty's affection to, and confidence in his people; so no other trial or judging is therein meant, but a fair, just, legal and usual trial, without any prejudice, passion, or prelimitation, or precipitation; like as by the said declaration there was a freedom for all the people interested, to make their application to the parliament, or in the mean time to the committee, from whom only his majesty is pleased to declare he would receive address and information. And seeing it was the petitioner's misfortune, during the sitting of the said committee, to be prisoner in England; whereas if he had been prisoner here in Scotland, he would have made application to them, and would have craved, and in justice expected that precognition might have been taken by them, to whom the preparing and ordering of that affair (to wit, aient the trial of the subjects carriage during the troubles) was recommended, that the petitioner's absence, which was his punishment, not his fault, may not be prejudicial, seeing the petitioner has lately received two several dittays, wherein there be many crimes grossly false, with all the aspersions and aggravations imaginable laid to his charge; importing no less than the loss of his life, fame, and estate, and the ruin of him and his posterity; which he is confident is not intended by his majesty. And that by the law and practice of this kingdom, consonant to all reason and equity, the petitioner ought to have upon his desire a precognition, for taking the deposition of certain persons, which being frequently and usually practised in this country, when any person is defamed for any crime, and therefore incarcerate before he was brought to a trial, at his desire, precognition was taken in all business relating thereto; which the petitioner in all humility conceives, ought much more not to be denied to him, not only by reason of respect to his quality, and of the importance and consequence thereof to all his majesty's subjects of all quality in all time coming; but also in regard it has been so meant and intended by his majesty's declaration aforesaid; like as the manner of the crimes objected, being actions in times of wars

and troubles, the guilt thereof was not personal and particular, but rather national and universal, and veiled and covered with acts of indemnity and oblivion; and so tender and ticklish, that if duly pondered, after a hearing allowed to the petitioner, in prudence and policy, will not be found expedient to be tossed in public, or touched with every hand, but rather to be precognosed upon by some wise, sober, noble, and judicious persons, for this and several other reasons in the paper hereto annexed. Nor does the petitioner desire 'the same *animo protestandi*, nor needs the same breed any longer delay; nor is it sought with out an end of zeal to his majesty's power, and vindication of the petitioner's innocency, as to many particulars wherewith he is aspersed; and it would be seriously pondered, that seeing 'Cunctatio nulla longa ubi agitur de vita hominis,' far less can this small delay, which is usual, and in this case most expedient, if not absolutely necessary, be refused, 'ubi agitur' 'non solum de vita, sed de fama,' and of all worldly interests that can be dear or of value to any man.

Upon consideration of the premises, it is humbly craved, That your grace, and the honourable estates of parliament, may grant the petitioner's desire, and to give warrant to cite persons to depone before your grace, and the estates of parliament, upon such interrogatories as your petitioner shall give in, for clearing of several things concerning his intention and loyalty during the troubles. And for such as are out of the country, and strangers, residents in England, commissions may be directed to such as your grace and the parliament shall think fit, to take their depositions upon oath, and to return the same.—And your petitioner shall ever pray, &c.

February 12. This Petition being read was refused.

*Edinburgh, at the Parliament-House.*

February 13, 1661.

The Marquis of Argyle (being accused of high-treason, at the instance of sir John Fletcher, his majesty's advocate for his interest) was brought to the bar. His lordship humbly desired but to speak a few words before reading the Indictment; assuring to speak nothing in the cause itself. Whereupon he was removed a little, and after some debate, the house resolved that the said Indictment should be first read. Then his lordship desired that a bill which he had caused his advocates to give in to the lords of the articles, (desiring a precognition, with many reasons urging the necessity of it) to which he had received no answer, might be read before the said Indictment; which being likewise refused, the said Indictment was first read; and after the reading thereof, the Marquis (being put off his first thoughts) was compelled to this extemporary discourse following, as it was faithfully writ when his lordship spoke.

May it please your grace; My Lord-Chancellor, before I speak any thing, I shall humbly protest my words may not be wrested, but that I may have charity to be believed; and I shall, with God's assistance, speak truth from my heart. I shall, my lord, resume Mephibosheth's answer to David (after a great rebellion, and himself evil reported of). Saith he, 'Yea, let him take all, for as much as my lord the king is come home again in peace into his own house;' 2 Sam. xix. 30. So say I, since it has pleased God Almighty graciously to return his sacred majesty to the royal exercise of his government over these nations, to which he has undoubted right, and was most unjustly and violently thrust therefrom by the late tyrannizing usurpers.

It is, my lord, exceeding matter of joy to us all, that the iron yoke of usurpation (under which we have these many years sadly groaned) is now broke, and with much freedom this high and honourable Court of parliament are meeting together under the refreshing warm beams of his majesty's royal government (so much longed for by our almost starved expectations): and I do earnestly wish his royal presence upon his royal throne amongst us. But since at this time that great happiness cannot probably be expected, I am glad that his majesty's prudence has singled out such a qualified and worthy person (as my Lord Commissioner his grace) to represent himself; whose unspotted loyalty to his majesty we can all witness.

I cannot, my lord, but acknowledge these two great mercies, which comfortably attends my present condition. One is, the high thoughts I deservedly entertain of that transcendent and princely clemency wherewith his sacred majesty is so admirably delighted; abundantly evidenced by many noted and signal testimonies in all the steps of his majesty's carriage; as those most gracious letters, declarations, and that free and most ample act of indemnity granted to all his majesty's subjects (excepting some of the immediate murderers of his royal father) to eradicate any timorous jealousies of his majesty's gracious pardon, (which might haply arise by serious reflections) convincing them forcibly of their own miscarriages, in these unhappy times of distraction. The effects, my lord, of which princely deportment (I am confidently hopeful) his majesty has experimentally, and shall find, prove one effectual cement to conciliate the most anti-monarchic and disaffected persons (excepting some of those barbarous fanatics) in all his majesty's dominions, most willingly to the subjection of his majesty's royal scepter; and with a perfect hatred abominate all deloyal practices in themselves and others, in all time coming.

The second is, my lord, when I consider that my judges are not such as we had of late strangers, but my own countrymen; both which jointly (together with the real sense and solid convictions I have of my innocence of those calumnies most unjustly charged upon me) encourages my hopes the rather, to expect

such dealing as will most sympathize with that clement humour (to which his sacred majesty has a natural propensity), and such equal administration of justice (void of all biasing prejudices) as will be most suitable to such a high and honourable meeting.

I shall therefore, my lord, desire to use Paul's answer for himself, (being accused of his countrymen) he laying a learned Orator, Tertullus, accused him, as I have in my Lord-Advocate; Paul's was heresy, mine of another nature; but I must say with him, that the things they alledge against me cannot be proved, but this I confess, in the way allowed by solemn oaths and covenants, I have served God, my king, and country, (as he said) which they themselves also allow.

I shall, my lord, remember (not with repining, but for information) my hard usage, never having had my hearing, my allowance of pen, ink, nor paper, nor the comfort of seeing my friends freely, until I received this summons, which was in effect a load above a burden; enemies, both Scots and English, out of malice calumniating me for all the same things, excepting what relates to his majesty's most royal father, of ever-glorious memory.

Therefore, my lord, I beg charity and patient hearing, not doubting but the wisdom and goodness of the parliament will be so favourable and not as the inconsiderate multitude (as a learned and able man writes, sir Walter Raleigh, in his preface to the History of the World). As we see in experience, that dogs always bark at them they know not; and that is their nature to accompany one another in those clamours; so it is with the inconsiderate multitude, who wanting that virtue which we call honesty in all men, and that special gift of God, which we call charity in christian men, condemn without hearing, and wound without offence given, led thereunto by uncertain report only; which his majesty king James only acknowledges to be the father of lyes. I shall not desire to be in the least mistaken by any that hear me; but sure I am, it is pertinently applicable to my case.

I intreat your lordship likewise to consider the words of another notable man, (Speed, in his history) who says, as the tongues of parasites are ill balances to weigh the virtues of princes and great men; so neither should theirs, nor other men's blemishes be looked upon as they are drawn with the deformed pencil of envy or rancour, which do always attend eminency, whether in place or virtue. I shall not, my lord, be so presumptuous as to arrogate any thing to myself in this, only I want not the two companions, for I am but a weak man, subject to many failings and infirmities, (whereof I do not purge myself) for as we must confess to God Almighty, if he should mark iniquity, who can stand? Neither shall I say, that there cannot a hole be discovered (as the proverb is) in my coat; and eat cannot but be so with any, specially such as have laboured in such times and business. But I

bless the Lord, that in these things which have been, and are here cast upon me, I am able to make the falshood and misconstruction of them palpably appear.

My lord, before I mention any thing in particular, I must shew this honourable meeting of parliament, and all that hear me (who doubtless have various apprehensions of my being present in this condition), that I am here rather as my misfortune, not my injury; wherein I desire to explain the difference, as Plato and Aristotle do very well; calling injuries such things as are done purposely with a wicked mind; and misfortunes, such things as are done with a good mind, though the events prove bad, yet we could not foresee them.

So my lord, I shall take God to record (who must judge me one day) upon my conscience, that what I did, flowed not from any injurious principle to any, though I acknowledge the events were not still so successful (which was my misfortune) indeed; but it has been my lot often in these times (wherein I and many others have been inevitably involved) to be by the malicious tongues of my calumniating enemies misconstrued for the worst; yea, even in many things that the Lord was pleased to make successful. For the truth of this, I may, I hope safely appeal to many in this honourable house, who can abundantly witness, my faithful and loyal endeavours for both my king and native country; whereof I should be very sparing to be an herald myself, were not the contrary so impudently affirmed. There are five main calumnies that I desire, my lord, to satisfy all that hear me a little in; to the end that the rest of less moment may be likewise in their own due time heard, afterward abstracted more from personal prejudice.

The first calumny is, my lord, concerning that horrid and unparalleled murder of his late royal majesty of eternally blessed memory. I do here publicly declare that I neither desire, nor deserve the least countenance or favour, if I was either accessory to it, or on the counsel or knowledge of it: which to make clearly appear, is under oath in the parliament-books 1649; whereof I was the first starter myself, to the intent that we might both vindicate ourselves, and endeavour a discovery, if any amongst us had any accession to that horrid and villainous crime; as also in my latter will, which I made going to England, in Anno 1655, or 1656, fearing what possibly might hereafter be obtruded by any upon me or my family upon that account, I set it down to clear my posterity; that I was altogether free of that detestable and execrable crime, or of any prejudice to his majesty, in either person or government. I left this with a very worthy gentleman, I believe well known to your lordship, and never saw it since; so your lordship may be pleased if ye will to call for it; and try the truth. Whatsoever other thing may be in it, I hope, my lord, this opportunity is a mercy to me to have that vile calumny (amongst many others) against me to be cleared.

And, my lord, to make this particular yet more evident, I did still, and do positively assert, that I never saw that monstrous usurper Oliver Cromwell in the face, nor ever had the least correspondence with him, or any of that sectarian army, until the commands of the Committee of estates sent me, with some other noblemen and gentlemen, to the border in anno 1648, to stop his march into Scotland, after those who retired from Preston fight; neither after he left the border, in the year 1648, did I ever correspond with him, or any of that sectarian army; so unsatisfied was I with their way, after the wicked and sinister courses he and they were upon, afforded evident presumptions for us to apprehend that he and they intended prejudice to his royal majesty. Only one letter I received from sir Arthur Haslerig, to which I returned answer, that he might spare his pains in writing to me, for I blessed the Lord, who had taught me by his word, 'to fear God, and honour the king, and not to meddle with them that were given to change.' Though sir Arthur be now dead, yet he acknowledged to several in the Tower, that he still had my letter: and when I was there, I often desired he might be posed and examined about it; which I can presently instruct. And during, my lord, my being in England, neither in London nor Newcastle, in anno 1647, there was not any thing so much as mentioned concerning his late majesty's person; all that ever I heard of, was in public parliament 1647. The commissioners papers at London, and Committee Books at Newcastle, will clear this fully.

The second calumny is anent the inhuman murder of duke James Hamilton: my lord, it is well known my great respect to that truly noble and worthy person, whereof (upon all occasions) I gave ample testimonies, and can yet convince any of his friends with the reality of it; and evidenced my true sorrow for the wicked cruelty committed upon him. But indeed I cannot deny I refused to compliment Cromwell on his behalf (he having, my lord, been immediately preceding, so instrumental, and so very active in that most horrid and lamentable murder of his late sacred majesty;) and if I had done otherwise, undoubtedly it had been a more black Article in that label now read, than any that is in it.

The third calumny is, that which breeds a great part of these groundless clamours, (though it be not in the indictment) is my lord marquis of Huntley's death; wherein I may truly say, I was as earnest to preserve him, as possibly I could, (which is very well known to many in this honourable house) and my not prevailing may sufficiently evidence I had not so great a stroke nor power in the parliament as is libelled. And, my lord, for his estate, I had nothing in that; but for my own absolutely necessary relief, and was ever most willing to part with any interest I had therein, getting his friends (who professed much zeal for the standing of the family) engaged for warrandice to me,

of any portion that should happen to fall to my satisfaction. And to evidence that I was no means to harm the family, I stood with my right betwixt all fines and forfeitures of bonds, and accounted for any thing I could receive. And to manifest yet further, that the burden of that family was not from any extrinsic cause to themselves, I have under the old Marquis's own hand, and his son, George lord Gordon, (who was a very worthy young nobleman) the just inventory of their debts, amounting to about one million of marks, in anno 1640. It would, I fear, my lord, consume too much of the parliament's precious time, to hear many other circumstances, to make this particular more clear, which I shall at this time forbear.

The fourth calumny is, the death of the marquis of Montross. There are many in this house, my lord, who know very well I refused to meddle either in the matter or manner of it: and so far were we from having any particular quarrels at one another; that in anno 1645, he and I were fully agreed upon articles and conditions contained in a treaty past betwixt us: the gentleman is yet alive who carried the messages both by word and writing betwixt us; and it was neither his fault nor mine that the business did not end at that time, which (it is known to all) proved very obnoxious to the kingdom thereafter.

The fifth calumny is concerning my dealing with the English after Worcester fight. It is well known, my lord, to many, that myself, and the gentlemen of Argyleshire, my kinsmen, vassals and tenants, endeavoured cordially to engage all their neighbours about them on all hands against the English, which they did not prevail in, but was most unhappily made known to the English commanders for the time; which they caused immediately to be published, as a very notable discovery, in their news-books; which occasioned two sad disadvantages to us: For they not only crushed our attempts in the infancy, but also determined the severer resolutions against us; whereby two strong regiments of foot, (Overton's and Read's) and very near the number of one of horse (under the command of one Blackmoor) were sent to Argyle; and when Dean came there, it pleased God to visit me with a great distemper or sickness (as Dr. Cunningham, and many others, who were with me, can witness). What, my lord, I was pressed to, when I was violently in their hands, may be instructed by the paper itself (written by Dean's man's own hand, yet extant to shew), which I did absolutely refuse, upon all the hazard of the uttermost of their malice; as also what I was necessitated to do, is likewise ready to be shewn, whereby I was still continued their prisoner upon demand.

I shall, my lord, add one reason more to clear this (besides many other weighty public reasons and considerations, which I shall forbear to mention at this time, it being more natural to bring them in by way of defences afterward), my own interest, and of all noblemen

and superiors in Scotland. It may rationally be presumed, that I had been a very senseless fool, if ever I had been for promoting such an authority and interest over me, as levelled all, and was so totally destructive to all that differed, myself and other noblemen, from their own vassals, which many say I was too earnest in, yea, it being absurdly derogative to all true nobility; and my ancestors and I, as it is said in that libel, having had so many titles of honour, dignity, and eminent places of trust, conferred upon us by his majesty's royal predecessors and himself, all for our constant loyalty and adherence to the crown on all occasions, as the records and histories of this ancient kingdom hold forth, besides the narratives of all our grants, and asserting the just privileges thereof, against all opposers. I did, my lord, ever, even when the English were at the intolerable height of usurpation, declare my true abhorrence to a Commonwealth Government, which was well known to them all. I was not indeed, my lord, very dissatisfied, when there were rumours spread abroad of Cromwell's being made a king, as some here present can witness; for I told them it was a most probable way for his majesty; and the more it were encouraged, would tend the more to Cromwell's, and their deformed Commonwealth's Government's ruin, and promote his majesty's just interest the more. My lord, I shall not much blame my Lord Advocate for doing his endeavour, it being an essential part of his function to accuse, but I must say, that it is very hard measure, that so able a man has taken near as many months, in taking pains to prompt as many enemies as his persuasions could possibly invite, to vent out the highest notes of their malice; and laying out search by them for, and collecting all the bad reports, or rather, to give them their genuine term, I may call them a confused mass of the common clashes of the country, thereby to advise misconstructions of all the public actings of both parliaments and committees during the late troubles, and with strange and remote inferences to adduce all those to the channel of my particular actings; he has taken, I say, my lord, as many months, as I have had days to answer them, being an exceeding disadvantage. But, my lord, that is not all, I am likewise extremely troubled, that he labours in that libel all along to draw an obscure veil of perpetual oblivion over all my good services; and specially my faithful and loyal endeavours in restoring of his sacred majesty to the crown of this his most ancient kingdom of Scotland, and the exercise of his majesty's royal authority therein; with my cordial endeavours for his majesty's restitution to the rest of his dominions also: which his majesty both knows, and has been pleased often to acknowledge it to have been good service. Yea, and many present in this honourable house know, that I extended both my zeal and affection to the utmost of my power for his majesty's service in that particular; which I willingly acknowledge nothing,

my lord, but my duty, whereunto I was tied both by natural, civil and Christian bands, to my sovereign: and specially such a king, of whom I may say well, as I have often affirmed, That he is a king in whom the Lord has been pleased to take such pleasure, as to possess his majesty with so many superlative degrees of excellency, that will certainly exalt his majesty's fame, both in our age, and to subsequent posterity, above all the monarchs in the world. So that, my lord, we may consequently discover a high demonstration of the Lord's singular kindness and special providential care for us his majesty's subjects, in preserving such a rich blessing as his sacred majesty, in whom the happiness of these nations is wrapt up, under the safe wings of his divine protection; I may say, even when the extravagant malice of men would have swallowed him up.

After my lord had ended this discourse, being heard by all very attentively, without any interruptions, thus the Lord Advocate spoke to my Lord Chancellor:

My lord, what can the marquis of Argyle say to the opposition at Stirling, A. D. 1648?

The Marquis replied, That he found my Lord Advocate endeavoured to bring him to debate the particulars, which he hoped should be cleared at another more convenient time, and waved answering the thing itself, but insisted thus:

My Lord Chancellor, I have (*informative only*) hinted a little, at the main things which I am often charged with, my memory cannot fully reach all, neither will time permit to circumsstantiate these particulars, which I have only touched in the general; nor is it my purpose at present to fall on the debate of any of that libel, not having yet consulted the process, by reason these advocates your lordship was pleased to allow me, have not yet all embraced, and the excuses of my ordinary advocates, in whom I had confidence, being admitted as relevant. And these gentlemen that have been pleased, in obedience to your lordship's command, to come here with me, not being much acquainted with matters of this weight, and not having unbraced till within these two or three days, so that they are strangers altogether to my case; I shall, therefore, my lord, humbly desire, that a competent time may be allowed me, that I may prepare my Defences, and I shall, God willing, abundantly clear every particular in that libel. And also, my lord, I humbly desire, that these other advocates, who were ordained by your lordships to assist me, and after the honourable lords of articles had heard them, rejected their excuses, may be now re-ordained to consult and appear for me.

The Marquis's advocates entered a protestation, that what should happen to escape them in pleading, either by word or writ, for the life, honour and estate of the said noble Marquis, their client, might not thereafter be obtruded to them as treasonable; whereupon they took instruments.

The Marquis assured my Lord Chancellor, that he knew not of any such protestation to be presented, and that it flowed simply of themselves: Whereupon the Lord Chancellor desired the Marquis and his advocates to remove, till the house should consider both of my lord's desire, and the advocates protestation.

The Marquis and his advocates being removed, the house, after some small debate, resolved, as to my Lord Marquis's desire, his lordship should have till the 26th of February to give in his Defences in writ, and ordained Mr. Andrew Ker to be one of his advocates. As to the advocates protestation, the house resolved, that they could not be allowed to speak in cases of treason either by word or writ, but upon their peril; only allowed them in the general, as much as in such cases was indulged to any. The Marquis and his advocates being called in, my Lord Chancellor intimated the aforesaid resolutions of the house, both in reference to my Lord Marquis, and to the advocates protestation.

When my Lord Chancellor had done, the Marquis spoke as followeth:

My Lord Chancellor, there is one thing that had almost escaped me, aient that opposition at Stirling, 1648, that my Lord Advocate was speaking of; that it may not stick with any of this honourable meeting, I shall ingenuously declare, That after the defeat at Preston, I was desired to come and meet with the Committee of Estates (meaning those who were in the then Engagement), and being come with some of my friends to Stirling, fearing no harm, and suspecting nothing, I was invaded by ~~the~~ George Munro, where several of my friends were killed, and myself hardly escaped, which is all that can be said I acted in arms, as many here know. My lord, not that I am any ways diffident, but I shall in due time clear every particular of that libel; yet I am not a little troubled that some who have heard the calumnies therein, may let them have such an impression, being asserted with such confidence, as to conceive a possibility, if not a probability of their being true; I shall therefore desire so much charity from this honourable meeting, that there be no hard thoughts entertained till I be fully heard.

The Marquis therefore, with the joint concurrence of his advocates, humbly desired, That the bill (containing many pungent reasons) for a preognition of his process, given to the honourable Lords of Articles, might be read and considered in plain parliament.

To which my Lord Chancellor replied, That it had been formerly refused at the Articles, and that it would not be granted.

So his lordship was carried back to the Castle.

*Edinburgh, at the Parliament House.*

March 5, 1661.

The marquis of Argyle being called in, gave in a bill, containing several weighty reasons, desiring a continuation till the meeting of par-

liament to-morrow. His Lordship being removed, after long debate it was carried against him by two or three votes: and his lordship being called in, my Lord Chancellor told him it was refused, and ordered his lordship to produce his Defences; whereupon he spoke as followeth:

May it please your Grace; My Lord Chancellor, this business is of very great concernment to me, and not small in the preparative of it to the whole nation; yea, it may concern many of your lordships who are sitting here, and your posterity: and therefore I desire to have your grace (my lord Commissioner) and the remanent members of this honourable meeting, your patience to hear me a few words without prejudice or mis-construction, which any thing I can say is often obnoxious to. I shall, my lord, begin with the words of that godly king Jehosaphat, that good king of Judah (after he was come back in peace to Jerusalem) in his instructions to his judges, he desires them to take heed what they do, for they judge not for men, but for the Lord, who is with them in the judgment.

My lord, I shall speak another word to many young men, who were either not born, or so young that it is impossible that they could know the beginning of these businesses, which are contained in the libel against me, (being all that hath been done since the year 1628) so that they might have heard by report what was done; but not why, or upon what grounds; and what some have suffered, but not what they have deserved.—Therefore I desire your lordship's Charity, until all the particulars, and several circumstances of every particular be heard, without which no man can judge rightly of any action: For as it was well observed by that incomparable Grotius that Aristotle asserts, That there is more certainty in the mathematics than morals; for as Grotius has it, the mathematics separates forms from matters, as betwixt straight and crooked there is no midst; but in morals, even the least circumstances vary the matter, so that they are wont to have something betwixt them, with such latitudes, that the access is near sometime to this, sometime to that extreme; so that betwixt that which ought to be done, and that which ought not to be done, is interposed that which may be done, but is nearer now to this than to the other extremity, or part, whence ambiguity often ariseth. The particular circumstances are so obvious to every understanding man, that I need only to mention them.

Polybius, my lord, makes much of his history depend upon these three, *concilia, causa, et eventus*; and there are likewise other three, *tempus, locus, et persona*, the change whereof makes that which is lawful duty unlawful, and on the contrary: so likewise in speaking or repeating words, the adding or parring from them will quite alter the sense and meaning; as also in writing, the placing of commas or points, will change the sentence to a quite other purpose than it was intended,

There is, my Lord, another maxim, which I do not mention as always undeniable; but when there is no lawful magistrate exercising power and authority in a nation, but an invading usurper in possession, esteeming former laws crimes; in such a case, I say, the safety of the people is the supreme law.

There is another maxim which is not questioned by any, and it is, necessity has no law; for even the moral law of God yields to it, and Christ's disciples, in David's example: For this Seneca says, Necessity (the defence of human imbecility) breaks every law; Nam *necessitas legum irridet vincula*, necessity scorns the fetters of law. So he that answers that libel "The Long Parliament revived," speaking of this last parliament (which his majesty calls a blessed, healing parliament), he says, the necessity to have it, may dispense with some formalities: So Ravenella (so much esteemed in matters of scripture, after he has divided necessity into absolute and hypothetic, makes that of submitting to powers of absolute necessity. Josephus also, my lord, that famous historian, when he mentioned David's speech to his children, after he had made Solomon (being but younger brother) king, he exhorts them to unity among themselves, and submission to him and his authority; for if it should please God to bring a foreign sword amongst you, you must submit to them; much more then to him who is your brother, and one of your own nation.

There is another maxim, my lord, 'Inter arma silent leges;' and it is well known, that divers retours and other things in Scotland were done in consideration of times of peace, and times of war.

Another maxim, 'Ex duobus malis minimum eligendum est, cum unum ceterum non potest evitari;' says Aristotle, Cicero, and Quintilian, 'cum diversa mala inter se comparantur, minimum eorum locum boni occupat.'

There is another maxim, No man's intention must be judged by the event of any action, there being oftentimes so wide a difference betwixt the condition of a work, and the intention of the worker.

I shall only add another maxim, It cannot be esteemed virtue to abstain from vice, but where it is our power to commit the vice, and we meet with a temptation.

As I have named shortly some few maxims, my lord, I shall humbly tender some weighty considerations to your lordship's thoughts.

The first consideration is, That there are different considerations to be had of subjects' actions when their lawful magistrate is in the exercise of his authority by himself, or others lawfully constituted by him, and when there is no king in Israel.

The second is, That there is a different consideration betwixt the subjects' actions when the lawful magistrate is in the nation, and when he is put from it, and so forced to leave the people to the prevalent power, of a foreign

sword, and the invader in possession of authority.

Thirdly, That there is a difference betwixt subjects' actions, even with the invading usurper, after the representatives of a nation have submitted to, and accepted of their authority and government, and they in possession several years; the nation acknowledging their constitutions, and all the lawyers pressing and pleading them as laws.

Fourthly, The actions of subjects are to be considered, when assisting the lawful magistrate to their power, and never submitting to the invading usurper until they were prisoners, and could do no better.

Fifthly, That there is likewise consideration to be had of the actions of such subjects, being still prisoners upon demand under articles to that purpose.

Sixthly, It is to be considered likewise of the actions of such a subject, who was particularly noticed and persecuted by the invaders, for his affection to the lawful magistrate and his government.

Seventhly, It is to be considered, that there is a great difference betwixt actions done *ad lucrum captandum*, and those done *ad damnum evitandum*; that is to say, actions to procure benefit, and actions to shun detriment.

Eighthly, It is to be considered, that there hath ever been a favourable consideration had, by any prince, of any person coming voluntarily, and casting himself upon a prince's clemency.

Ninthly, It is to be considered, that his majesty himself hath a gracious, natural inclination unto clemency and mercy, which hath been so abundantly manifested to his subjects in England, even to all (except to some of the immoderate murderers of his royal father) that it cannot be doubted, that the same will be wanting to his people in Scotland, who suffered by them (whom his majesty hath graciously pardoned) even for their dutiful service, and affection to his majesty.

Therefore without thought of any prejudice to the parliament, or this honourable meeting, I must make use of my Lord Chancellor of England his words, though in another case, saying, 'There cannot too much evil befall those who do the best they can to corrupt his majesty's good-nature, and to extinguish his clemency; for his majesty's self declared his natural inclination to clemency, in his speech to both his houses of parliament in England, whom he hath, with all his people, conjured, desired, and commanded, to abolish all notes of discord, separations and difference of parties, and to lay aside all other animosities, and the memory of past provocations, and to return to a perfect unity amongst themselves under his majesty's protection; which is hoped all your lordships will concur in, having so worthy a pattern to follow: And these are his majesty's inclinations expressed, as it is suitable to the arms he bears as king of Scotland, which is the lion, whose motto is known to all:

—Nobilis est ira leonia,  
Parcere subjectis, et debellare superbos.

Which is to say, to vanquish and subdue the proud, and spare such as are submissive; of the which number I am one, and for that effect, in all humility present this humble Submission to his majesty, and your grace, my Lord Commissioner, in his majesty's name.

To my Lord Commissioner his grace, and High Court of Parliament, March 5, 1661.

Forasmuch as I Archibald, marquis of Argyle, am accused of treason at the instance of his majesty's advocate, before the High Court of Parliament; and being altogether unwilling to appear any way in opposition to his sacred majesty, considering also that this is the first parliament called by his majesty after his happy return to his kingdom, and government, for healing and repairing the distempers and breaches made by the late and long troubles: I have therefore resolved that their consultations and debates about the great affairs and concernment of his majesty and this kingdom shall have no interruption upon occasion of any process against me. I will not represent the fatality and contagion of those times, wherein I, with many others in these three kingdoms, have been involved; which have produced many sad consequences and effects, far contrary to our intentions. Nor will I insist upon the defence of our actings in this kingdom before the prevailing of the late usurpers, which, if examined according to the strictest interpretation, and severest censure of law, may be esteemed a trespass of his majesty's royal commands, and a transgression of the law: But, notwithstanding thereof, are by his majesty's clemency covered with the veil of oblivion by divers acts of parliament, and others, to that purpose, for the safety and security of his majesty's subjects: And that my actings since, and any compliances with so prevalent a power (which had wholly subdued this, and all his majesty's other dominions, and was universally acknowledged) may be looked upon as acts of mere necessity, which hath no law; and it is known, that during that time I had no favour from these usurpers.

It was inconsistent with, and repugnant to my interest, and cannot be thought (unless I had been demented and void of reason) that I should have had freedom or affection to be for them, who being conspired enemies to monarchy, could never be expected to befriend or tolerate nobility. And whereas that most horrid and abominable crime of taking away the precious life of the late king of ever-glorious memory, is most maliciously and falsely charged upon me; if I had the least accession to that most vile and heinous crime, I would esteem myself unworthy to live, and that all highest punishments should be inflicted upon me: but my witness is in heaven, and my record on high, that no such wicked or disloyal thought ever entered into my heart. But

choosing to shun all debate, rather than to use any words or arguments to reason with his majesty, whom though I were righteous, yet would I not answer, but would make my supplication to my judge; and therefore (without any excuse or vindication) I do, in all humility, throw myself down at his majesty's feet (and before his grace his majesty's commissioner, and the honourable estates of parliament), and do submit and betake myself to his majesty's mercy: and though it be the great unhappiness of these times (the distempers and failings of these kingdoms being so epidemic and universal), that his majesty should have had so much occasion and subject of his royal clemency; yet it is our great happiness, and his majesty's high honour, that he has expressed and given so ample testimony thereof even to those who did invade his majesty and this nation, for no other cause than for their faithful and loyal adherence to his majesty, and his just, royal interests: which renders his majesty's goodness incomparable, and without parallel, and gives me confidence, that his grace his majesty's commissioner, and the honourable parliament, of their own goodness, and in imitation of so great and excellent a pattern, will compassionate my condition. And seeing it is a special part of his majesty's sovereignty and royal prerogative, to dispense with the severity of the laws, and that it is a part of the just liberty and privileges of the subjects, that in cases of great extremity and danger, they may have recourse to his majesty as to a sanctuary and refuge.

It is in all humility supplicated, that the Lord Commissioner's grace, and the honourable parliament, would be pleased favourably to represent my case to his majesty, and that the door of his royal mercy and bounty, which is so large and patent to many, may not be shut upon one, whose ancestors for many ages (without the least stain) have had the honour, by many signal proofs of their loyalty, to be reputed serviceable to his majesty's royal progenitors in the defence of the crown, and this his ancient kingdom. And if his majesty shall deign to hold out the golden sceptre of his clemency, as an indelible character of his majesty's royal favour, it will lay a perpetual obligation of all possible gratitude upon me and my posterity, and will ever engage and devote us entirely to his majesty's service. And the intercession of this honourable parliament on my behalf to his gracious majesty, will be a real evidence of their moderation, and they shall be truly called a healing parliament; and God, whose mercy is above all his works, shall have the honour and glory which is due to his great name, when mercy triumphs over justice.

The aforesaid Submission being read, the Lords of Articles would give him no present Answer; but resolved to report the same to the Parliament the morrow.

*Edinburgh, at the Parliament.*

Martin 6, 1661.

My Lord Chancellor having reported what had been done the former day before the Lords of Articles ament the marquis of Argyll's process, presented his Submission; which was immediately read; and after a long debate, the first question was stated; If it was satisfactory, or should be accepted or not? The second question was, Whether they should proceed presently in his process, without regard to his Submission or not? Both which were carried in the negative against him. Then he was brought to the bar, and the Lord Chancellor told him, that his Submission was rejected, and that notwithstanding thereof, the parliament commanded him to give in his Defences.

He replied, That his case was very hard, to be debarred from that which was his just privilege, and of all subjects, in such extremities to refuge themselves at his majesty's mercy and clemency; and that as it was the undeniable privilege of the subject, so also it was a special prerogative of his majesty, and the grandeur of it consisted much in the eminency of the subject, whom his majesty should graciously be pleased to extend his mercy unto: And besides many other strong persuasions that encouraged his Submission, his majesty's own Proclamation (which he acquiesces in), wherein his majesty is graciously pleased to declare, 'That his just interest and royal prerogative being first asserted, and trial only taken of his subjects' carriage, then he is most willing to pass an Act of Indemnity to secure them.' And the like being already done in our neighbouring nation, and his majesty having performed his royal promise there already, he desired that their study might be to imitate his royal pattern; considering, that as it was a practice most agreeable to his majesty's clement inclination, so also, that as Solomon that wise king said, That 'the king's throne is established by righteousness and mercy.' He entreated therefore their lordships seriously to consider his condition, and not to single him out, and aim at his ruin; and not only his, but also, he feared, both his family and name, their ruins also.

As for giving in his Defences presently, he said, that the confidence and firm hope he had that his humble Submission should have been accepted, and so cut off totally all further trouble either to their lordships or himself, made him the more secure and slack, not resolving to lean to them, or any way (as he had expressed in his Submission) make use of them, though he were altogether innocent: and if he were necessitated to make use of his Defences (as he declared he was most unwilling to do), it should be simply in obedience to their lordships commands, and no otherwise.

Not having fully ended,

The Chancellor told him, if his lordship had



them not in readiness at that time, to have them ready to give in to the Lords of Articles the morrow.

So he was returned to the castle.

March 7, 1661, at the Lords of Articles.

The Marquis being called before the Lords of Articles to give in his Defences,

He declared, that he had seen their lordships order, that he might forbear his coming, if he would produce his Defences; therefore he told their lordships ingenuously, that if he had them in readiness, he would neither have troubled their lordships nor himself; for having a petition ready to desire a delay, he thought it rather his duty to come and propose it himself, hoping their lordships would consider that his presenting his Defences either lame and wanting something, or blotted so as they could not well be read, was a very great prejudice to him, but a delay of a few days was no prejudice at all to any thing my Lord Advocate could say; and therefore hoped their lordships would not refuse him some competent time, whereby he might have them in readiness.

Upon the which he was removed; and after some debate, being called in again, my Lord Chancellor told his lordship, that he was ordered to give in his Defences before Monday at ten o'clock to my Lord Advocate, otherwise the Lords of Articles would take the whole business to their consideration, without regard to any thing he could say.

The Advocate told his lordship, that he must give in his whole Defences.

To which he answered, that that was a new form to give in peremptory Defences before the discussion of relevances.

Whereupon sir John Bychmore did rise up, and told his lordship that he was commanded to inform him, that there was a different way betwixt a process in writ, and the ordinary way before the session, or chief justice.

To which his lordship answered, That he was very ill-yoked with so able men; but he must tell them, that he had once the honour to sit as chief justice in this city, and he knew the process before them was in writ, and yet the relevance was always first answered, before any peremptory proposed; for relevance is most to be considered in criminals.

Sir John Therester said, and so did the Advocate, That it was his lordship's advantage to give in as strongly his Defences as he could, otherwise the Advocate might refer the whole business to the judge, and make no other answer.

His Lordship replied, That he would do in that by advice of his lawyers, and hoped any order of their lordships at present, was without prejudice to his giving in more defences afterwards, since he was so straitened with time, and commanded to give in what was ready: His lordship likewise added, if their lordships and the parliament had been pleased to grant his desire of a precognition, which

was agreeable as he humbly conceived both to law and practice, and his majesty's Proclamation, which he acquiesced in, it could not but have been the readiest way for trying his carriage during the late troubles; where now of necessity he must in the process, which he hopes will not be refused, crave one way for exculpation in many particulars; for he both was resolved, and is resolved to deal very ingenuously as to matter of fact. And if that had been first tried, which he was most desirous of, both from the committee, and since from the parliament, he is hopeful there would not remain so much prejudice against him in the most part of things of greatest concernment in this libel; and for his own part, he desired nothing more than the truth to have place, and to do with his person what they pleased; for by the course of nature he could not expect a long time to live, and he should not think his life ill bestowed, to be sacrificed for all that had been done in these nations, if that were all. Thereafter he was returned to the castle.

*The Marquis of ARGYLE'S DEFENCES against the grand Indictment of High-Treason exhibited against him to the Parliament in Scotland.*

The defender professes his sense of the mercy and happiness of the land, that we are delivered from the lawless arbitrary power of the armed force of cruel usurpers, and have restored to us our only lawful sovereign lord, and in his sacred person, the authority of law, the order of legal judgment, and in them the liberty of legal defences: thereupon depend the great security of the liberties, lives and estates of the subject; this gives the defender confidence to appear in judgment, nothing doubting of a fair procedure and full hearing, complete time being allowed in all the dyets of the process, and all things therein so ordered, as may be suitable to the justice and gravity of this high and honourable court, and the importance of the cause; justice, not only as to the defender, but justice as to the preparative and consequence. And he with much confidence expects all justice from his most gracious sovereign, the justest of princes, and who is represented and acting by so truly noble a person as my Lord Commissioners' grace, also hoping the honourable court of parliament will without all prejudices impartially consider his legal and just Defences; and that they will proceed so far without all ground of suspicion therein, that any who is within degrees to persons against whom he is libelled to have committed any of the deeds which are made the ground of his ditty; or if any are conscious to themselves, of capital enmity, or has been any ways informer against the defender, or have predetermined by uttering the judgment already of his cause, conscience and honour will make them abstain sitting and voting therein: so much the more, that they see how unwilling he is to propose any recusatory against any member of the house upon these

or other grounds in law ; so confident is he of the vindication of his own carriage, so much he defers to the ingenuity or generosity, and so high is the honour he bears to this honourable Court.

First, It is alledged, that there be no process, nor is the defender holden to answer, till the whole libel and all the parts thereof be given him up to see : also it is the Commissioners instructions, and addresses sent and made to his majesty by the defender, as is alledged, and the Commissioners at Breda are expressly repeated, as a part of the libel, *brevitatis causa*, in the tenth article, and yet the same has not been produced nor given to the defender to see and advise with ; till which be done, he cannot be held in to answer : like as, where points of the dittay are founded upon writ, the defender craves that he may have up the writs whereupon the same are founded, to see before he be holden to answer to the dittay, which is very consonant to law, l. 1. Sect. 3. F. 'de edendo ubi edenda sunt omnia quæ actor editurus est, apud indicem,' et l. 3. cod. eodem, whereby the pursuer is ordained to shew to the defender all that he will use against the defender before the judge : Otherwise the defender cannot prepare himself for his defence, which is the reason given in these laws ; Paulus, lib. 5. cent. 16, and the doctors throughout the said laws, 'et l. unius, Sect. 9. 'F. dequest. post alios to l. 2. Mun. 3, 4, 5, 6. 'so dedendo bart. ad leg. ubi min. 8. F. de 'quest.' But so it is, there are several articles in this dittay founded upon writ, not produced in the first articles in the prosecution of Mr. John Steward to death, as a leasing-maker between the king and his subjects libelled, and yet neither libel nor sentence against Mr. John produced.

Item, Colonel Henderson's commission for keeping Dunbarton castle is libelled, and the commission not produced.

Item, In the sixth article a capitulation alledged, made and subscribed by the laird of Artinglas and other officers under the defender's command, with the laird of Lamond and Escoge.

Item, The assurance alledged given to the persons within the house of Lochhead, inentioned in the seventh article, the defender craves, *ante omnia*, it may be produced.

Item, That ordinance of parliament or committee of estates, whereby it is libelled in the same seventh article, that Calkitoch was ordained to be brought from the prison where he was for the time, &c. to the town of Edinburgh.

Item, In the ninth article the defender's protestation, *Parliam. anno 1648.*

Item, In the same article the letter written to Cromwell, libelled as being dated the 6th of October, 1648 ; whereby it is libelled, that the defender and his complices wrote to Cromwell, &c.

Item, In the same article Sir John Cheesly's instructions libelled, as being dated the 17th of

October, 1648, desiring the persons taken in the engagement to be detained as pledges of that kingdom's peace.

Item, eod. art. the warrant alledged to be under the defender's hand for a proclamation against the families of Ogilvie and Rea.

Item, Art. 10, the letter alledged written to Cromwell, anno 1650, after his invasion.

Item, eod. art. the act of the West-Kirk, with the declaration, whereunto it relates.

Item, Art. 11, the remission alledged given to John Mac-Dougal, of Dimolich, under the defender's hand.

"All which the defender humbly alledges ought to be given up to see, before he be held in to answer ; especially 'post tanti temporis intervallum,' so long a time having intervened between the intention of this pursuit, and the dates of the said act and papers aforesaid libelled on ; some of them being twenty years ago, some fifteen, and the latest ten or eleven years ; as has always been the practice in such cases, and may be instanced in my lord Balmerino's process, and was found by this honourable court in Mr. James Guthrie's process.

Second, Under protestation that the former exception may be the first discussed, that the papers therein mentioned, *ante omnia*, be given up to the defender to see ; it is alledged, that it has been always the princely care of his majesty's royal ancestors to keep the laws of this realm certain, 'Ne dum incerto utemur jure, fluctuaret respublica ;' and lest law, which is introduced for the lieges security, should become their snare : therefore, by king James 1, (that illustrious prince) parliament 7, cap. 107, all the interpretation of his majesty's statutes, otherwise than the same bear, is forbidden ; and if forbidden, can be no ground of dittay : and in effect to found a dittay upon statutes otherwise than they bear, were to found it upon such statutes we have not ; but so it is in the proposition of this libel. The acts of parliament whereupon the same is founded, are otherwise repeated than they bear : for, 1. The first part of the proposition of the dittay founded upon the two first acts of parliament libelled, viz. the third act of the 5th parliament of king James 1, and the first act of king James 6, both upon the said acts conclude the pain of forfeiture and treason. The same is most irrelevant, because in the said acts, there is no mention made of any crimes of the nature and quality libelled ; the said third act of the 5th parliament of king James 1, being anent the fees of craftsmen, and the price of the work ; and the first act of king James 6, being anent the constitution of the earl of Murray, regent ; and in neither of the said acts is there any pain or punishment inferred, and so far less can the pain of forfeiture or treason be from the said acts concluded against the defender. And if it should be said, the 5th parliament of king James 1, is mistaken in the writing for the first parliament ; and in citing the first act of king James 6, the citation of the number of the parliament is

also omitted, viz. the number eighteen : the dittay repeats these two acts otherways than they bear, for the words of the said 3d act of the first parliament of king James 1, statutes and ordains, ' That no man openly or notoriously rebel against the king's person, under the pain and forfeiting of life, lands and goods ;' which is not at all in the libel repeated. And as to the said 1st act of the 18th parliament of king James 6, the words thereof are cited, yet with some difference and transposition libelled ; but thereto is added the sanction and pain, ' That whosoever doth, in the contrary, they are to be punished as traitors, and to forfeit their life, lands and goods ;' whereas there is no sanction or pain in the said act, only it is declarative of his majesty's prerogative, and of his three estates to maintain the same.

Item, In the second part of the proposition of the dittay, founded upon the 25th act of the 6th parliament of king James 2, and 75th act of the 9th parliament of queen Mary : is not repeated as it bears as to punishment, for therein they who attempt to do, or raise any bands of men of war, horse or foot, without any special licence of his majesty, and his successors, are only declared punishable by death ; whereas they are libelled to be punishable as traitors, while it is the pain only of the said 25th act of the 6th parliament of king James 2.

Item, in the next part of the proposition of the dittay, founded upon the 43d act of the 2d parliament of king James 1, and the 134th act of the 8th parliament, and the 10th act of the 10th parliament, and 205th act of the 14th parliament of king James 6, none of these acts are repeated as they bear, but confounded, both as to the crimes and pains therein contained, to a very far different sense (as is humbly conceived) from that which the said acts severally propose ; transferring the pains of the said several acts and crimes therein contained from one to another, as may appear by what follows. For the first of these acts, being the 43d act of the 2d parliament of king James 1, is only of leasing-makers and tellers of them, which may engender strife between the king and his people ; and the pain of the act is tinsel of life and goods to the king, as is clear both by the title and body of the act. The second act, viz. the 134th act of the 8th parliament of king James 6, is also the same crime, viz. Against those that utter false, slanderous and untrue speeches, to the disdain, reproach or contempt of his majesty, his council or proceedings, or to the dishonour of his majesty's parents and progenitors : adding also those that meddle in the affairs of his majesty and his estates, and the pain is the pain contained in the acts of parliament made against leasing makers and tellers of them. The third is the 10th act of the 10th parliament of king James 6, against those who speak or write any purpose of reproach or slander against his majesty's person, estates or government, or deprave his laws

or acts of parliament, or misconstrue his majesty's proceedings, whereby any misbelieving may be moved between his majesty and nobility, and his loving subjects ; and the pain thereof is only the pain of death. And by the 205th act of the 14th parliament of king James 6, those that hear the said words leasings, and do not apprehend and reveal the authors thereof, shall incur the like punishment with the principal offenders ; and yet leasing-making, and telling, which is the crime punishable by the first of these acts, viz. the 43d act of the 2d parliament of king James 1, is punishable, but the loss of life and goods to the king is omitted. And false slanders, which is the crime contained in the 134th act of the 8th parliament of king James 6, and only speaking to the dishonour of his majesty's parents and progenitors, and meddling with the affairs, of his highness's estate, is repeated out of the said 134th act ; and joined to the crime contained in the said acts, 10th parliament, 10 James 6, and to both, the pains added of losing life, lands and goods, whereas the pain of the said 10th act is only of death. And the pain of the said 134th act of the 8th parliament of king James 6, is only the pain contained in the acts against leasingmakers, which in the said 43d act of the 2d parliament of king James 1, is only the loss of life and goods, and not of life, lands and goods : but allanely the escheats of goods moveable : as may appear, first, because whenever the pain of tinsel of life and goods is found either in the acts of parliament or old laws, goods are understood moveable, as is clear from the crimes that are ordained to be so punished : as man-slaughter, by the 42d statute of Robert 3, is prohibited under the pain of tinsel of life and goods : where Skein explains, that the goods are to be understood of moveables. And by the 90th act of the 6th parliament of king James 1, the receipt of him who is fugitive for slaughter, is forbiddeu under the pain of tinsel of life and goods. (Where Skein expounds goods to be goods moveable, in his Tractate of Crimes, tit. 2, chap 6, par. 4.) And so it is clear in the other acts of parliament, that their whole pains are distinct, viz. tinsel of life and goods alike, is only extended to moveables ; and tinsel of life, lands and goods, which latter pain in the stile of our acts of parliament is commonly thus expressed : that he who incurs it shall die, and forfeit life, lands and goods, as the 31st act of the 7th parliament of king James 2, *et passim alibi* forfeitdre properly relating to lands ; and in the common signification of our said goods, to be understood of goods moveable.

More especially it may appear, that the pain of the said 43d act of the 2d parliament of king James 1, given to the said 134th act of the 8th parliament of king James 6, is only the pain of escheat of moveables, because the pain of forfeiting of life, lands and goods, is the proper pain of the crimes that by our laws are declared treason. And therefore Skein, both in his index of the acts of parliament on the

word treason, refers the crimes that are so punishable to the head of treason; as also in his tract upon crimes in the end of Reg. Maj. but doth not at all mention therein the crime of the said 43d act of the 2d parliament of king James 1, nor of the 134th act of the 8th parliament of king James 6, nor of the other acts whereupon this part of the proposition is founded. But in his index has the crime of leasing-making between the king and his people under a head by itself, and therein expressly mentions both the said 43d act of king James 1, and 134th act of king James 6, like as in the said tract of crimes after the chapters of treason and points thereof, cap. 1, and pain of the same, which, cap. 2, he expressly says, is the tinsel of life, lands and goods; and declares, that he understands by goods, moveable goods. And auent the process and judge of the crime of treason, cap. 3, when he comes to other crimes capital, of all which the pains are either the tinsel of life and moveable goods, or life only, or of some less pain in body or goods, but never of life, lands and goods, as is clear through the whole tract that follows. And in his 12 cap. auent the crime of falsity, he has the crime of leasing-making between the king and his people. And the same acts of parliament, viz. Act 43d of the 2d parliament of king James 1, and the 205th act of the 11th of king James 6, and in his 25th cap. has the crime of infamous and seditious libels; and the said 10th act of the 10th parliament of king James 6, cited therefore.

Item, In the last two acts of parliament whereupon the proposition of the dittay is founded, viz. the 37th act of the 2d parliament of king James 1, and 144th act of the 12th parliament of king James 6, it is libelled, that all receivers, suppliers or intercommoners with any traitors, are punishable by forfeiture, as the traitors themselves; which is not as the act bears, for both the crime and pain libelled out of the said 144th act of the 12th parliament of king James 6, the act is not simply against those who intercommon with traitors, and rebels, but with such as are declared rebels and traitors. From all which it follows, that the proposition of the libel founded upon the acts, as they are libelled, is not relevant; and therefore the defendant ought to be assolized *in hoc libello*.

Tertio, As to the last part of the proposition of the dittay, the defender abhors so much the crime therein mentioned, that he thinks any person who will conceal any malicious purpose, wronging in the least, far more in putting violent hands on the inviolable sacred person of his sovereign lord, were unworthy to breathe in common air, let alone to be defended; and is so conscious to himself of his own innocency in any such things, that he needs no other defence, but the confident denial of any guiltiness therein, either less or more. But before a practice pass in this honourable court of parliament, of founding a dittay of treason upon common law and practice; it is under protestation afore-

said, and with all humility alledged against the relevancy of that part of the proposition, as founded upon the said common law and practice, That it is not relevantly founded thereon, in so far as by the 28th act of parliament, 1640, it is expressly found and declared traitors, but after trial by the parliament or judges ordinary; and finding that the said persons have contravened a law and act of parliament, made under the pain of treason? and therefore a person cannot be declared guilty of treason on a dittay founded on common law and practice. 2. *Pain* being *legis sanctio*; and the common law is known with us, to have only *vim rationis*, non *legis*; and therefore no pain, but especially the highest of pains cannot be founded thereupon. And 3, specially as the practice beside the reason aforesaid; because l. s. c. fad. senat. Consult. Turpilianum, ‘facti quidem questio in arbitrio est judicantis, poenæ vero per secutio non ejus voluntati mandatur, sed legis auctoritati asservatur.’ Whence Menochius lib. 5. Presumpt. cap. 29. *in principio* saith expressly, ‘pena iudici non potest nisi expresso iure sit tantum per l. at si quis divus fad. reli. et sumptus funerum.’ And it is the common opinion of the doctors, That ever when punishment is not expressly defined in the law, but is permitted, *arbitrio iudicis*, it cannot be extended to death, far less to the pain of treason. And the foresaid act of parliament, 28th act, a. n. 1610, takes away the relevancy of founding treason upon common law and practice, as said is.

If a dittay to infer the crime of treason might be founded on practice, either of the justice-court or parliament, which are two courts, before which crimes of treason are judged; yet our practice is ‘*consuetudo rerum ita iudicata*,’ as Craig defines it, lib. 1. De Feudis Dig. 8. And therefore to it, as to the introducing of all other consuetudes, there must be *actuum frequentia*, reiterated acts and practices, Per l. De quibus ff. De Legibus et Cart. Jason, and other doctors on that law; et per l. Cod. ‘*quæ sit longa consuetudo*,’ et l. et in totum 3. c. De Cres. Dif. privat. 2. ‘*Illud explorandum, an contradictio aliquo iudicio sit firmata*,’ that is, it would be tried if decrees *in foro contradictorio* have been given thereupon. As also saith Craig, Dicta Dig. 8. *in fine*; and if in any case, that ought to be far more in crimes; and if in crimes, yet more in the highest of crimes; and in all concerns of one of the most eminent peers of the land, which is clear.

For in matters civil (how small soever) before the session, a practice will never be founded on some decrees given either for non-compearance, or on compearance where there is little or no dispute, or it may be great inequality in advocates of the two parties. And if in civils, where the interest is only pecuniary, this ought to be much more in libels of treason, as hath been said; but so it is, neither in justice-court nor parliament will be found, that it hath been frequently judged, *non in foro contradicto*.

*rio*, on a dispute where this defence hath been propounded. Yea, it may be well alledged, that there can be no practice shewed of either of these courts, that any hath been found guilty of treason, but on some act of parliament under the pain of treason, as is said; but however the said 28th act of parliament 1640, is most clear, which is most agreeable to reason, and the law of England, very laudable in that point; as Coke has it in his chapter of treason, and therefore the libel as founded on practice is no-ways relevant, and the defender ought to be assoilzied therefrom.

Quarto, Every libel both of civil law and law ought to be clear, distinct and special; but especially criminal libels, because of the great importance of them, ought to be most clear, distinct and special, ‘*jure libellus in criminali- bus debet esse clarissimus*,’ saith Dambaud, *Prax. Crim.* 3. num. 3. And therefore, ‘*Libellus Criminalis obscurus parte etiam non excipiente extenditur favore rei*,’ Baldus in *Lega Addita*, num. 10. c. *De Edendo*, Alex. Consil. 72. Col. Versit. et licet volum. 1 *Hip. Consil.* 49. et Battander *Prax. Cran. Reg.* 6. s. 3 et 4. ‘*nec enim debet accusator cum ex- istimationis alienæ jactura, et discrimine vagari licet*,’ L. si in Rem ff. de Rei unum. So that any obscure criminal libel is inept, and the defender ought to be assoilzied therefrom, though he did not oppose his defence for that effect. But so it is, this ditty is most unclear and undistinct, in so far as in the proposition of the ditty, there are many acts of parliament libelled on, being statutes anent diverse crimes of very different natures, and inferring different punishments, according to the article of the crimes; and in the subsumption the pannel is indicted for several crimes alledgedly committed by him, contrary to the said laws and acts of parliament in general, without condescending on the particular acts of parliament that the pannel has contravened by committing the particular deeds libelled, and so leaving him to great uncertainty. Whereas in all law, reason, and form of process, the defendant ought to be certified what acts and laws he has contravened, by committing such deeds that are in a multiplicity of crimes. After proposing all the statutes relating to the same crimes, all the deeds immediately ought to be subsumed, falling under the compass of such statutes, and thereafter the acts relating to another indifferent crime ought to be proposed, and the deeds falling under the compass of these acts immediately subsumed, and throughout the libel, which is no way done here; but first, by many different acts accumulated together in the proposition, and then the most different facts accumulated together indistinctly in the subsumption, not condescending on the acts by them contravened: and therefore the libel is inept, and the defendant ought to be assoilzied therefrom.

This defence is further confirmed in law; 2. Because a libel being *sylogismus quidem practicus*, ason and the Doct. Institut. de Act. in criminal dittays, the proposition consists in *jure*

*constitutionis*, in the laws whereupon the libel is founded: The manner is in the subsumption of the facts or crimes under these laws, and the conclusion inferring the pain: Because of such a crime, as falling under the law libelled, on a very essential part of every libel, is *quo jure petatur*; and a libel being uncertain in this, is unclear and uncertain in a very essential point, and inept. 3. In law, a libel ought so to be conceived as the defender may know *actionis speciem*, otherwise it is inept. l. i. *de edendo*, l. 3. c. *codem*, and may also know *actionis jus*, and that he may deliberate how to defend; but in our case, that arises from the distinct application of the laws to the facts, *ex quibus jus oritur*. 4. If such uncertain libel were admitted, the defender, because of the obscurity and uncertainty of the libel, should be prejudged of a certain defence he could make against the relevancy of the same, because the relevancy of it consists in the subsumption of the facts and crimes libelled under some certain law: which being condescended on by a distinct subsumption, under each law, of the crimes that were libelled properly to fall under the same, the defendant would alledge why such crimes cannot be subsumed relevantly under such laws and acts, which he otherwise cannot do in such multiplicity, both of different acts and crimes as are libelled in this ditty: there being not only in divers articles, but even in every article, a great diversity of the crimes therein libelled, and yet the defender left in uncertainty under which of all the acts libelled on, the pursuer intends the subsumption thereof; and so in uncertainty altogether how to conceive his defence. And if this be not ‘*maxime vagari, cum maximo alienæ vitæ et fortunæ periculo*,’ it is hoped, as it will be found very evident so it was never the practice heretofore used in criminal libels; and which, that it should not be now sustained, is of universal concernment: and if sustained, might prove of very dangerous consequence. And the libel, as it is now conceived, is inept, and the defender ought to be assoilzied therefrom.

Before the defender come to his particular answer to the several Articles of the Ditty, to the effect the defender’s case, in his accession to the public actings of this kingdom, during the unhappy troubles till the treaty of Breda, and his majesty’s home-coming, may be truly stated; it is humbly craved that the Commissioner’s grace and honourable estates of parliament may be pleased to remember, that the Kirk and whole body of this kingdom entered at first into the national Covenant, for defence of religion and his majesty’s person and authority, and mutual defence one of another in maintaining the same; wherein, and in what followed in prosecution thereof till the treaty with his late majesty, and act of oblivion, set down at length and ratified in the 6th act of the 2d parliament, anno 1641; his late majesty did so far acknowledge and approve their loyalty, that in the seventh article of the said large treaty his majesty was pleased to appoint, that at the

close of that treaty, their said loyalty should be made known at the time of public thanksgiving in all places, particularly in the parish churches of his majesty's dominions. And in the said act of pacification and oblivion, is pleased to declare, that their constant loyalty in their intentions and proceedings should not be hereafter called in question; and that whatsoever fell forth in those tumultuous times, whether prejudicial to his majesty's honour and authority, to the laws and liberty of the church, or the particular interest of the subject, might be buried in perpetual oblivion; and whatever had ensued thereon, no mention should be made thereof in judgment or without: like as his majesty for himself and his successors, promises, *in verbo principis*, never to come in contrary to the said statute, nor anything therein contained; but to hold the same firm and stable, and to cause it to be truly observed, and these presents to have the full force and strength of a perfect and true security. Like as thereafter in anno 1643, the League and Covenant was entered in with the two houses of parliament, upon the ground of the large treaty, by the church and whole body of this kingdom, purporting the same ends of the Covenant, for maintenance of religion, king and kingdom; which was thereafter approved by the parliament, 1644, and fifth act thereof, and prosecuted by wars both within and without the kingdom, by the authority of divers succeeding parliaments; church and state going unanimously along together, without any apparent public difference till the year 1618. And even then that parliament, 1618, so highly homologate the said League and Covenant, that they declare the breaches thereof to be the grounds of their resolutions of that war, act 4, 7 and 8; and their desires for preventing thereof to be the fulfilling of the same, *ibidem*. The necessary qualification required in all with whom they would join either in their armies or committees, is, that they be such who were of known faithfulness to the Cause and Covenant in the said act 7, and that they would oppose, and endeavour to suppress the enemies to the Cause and Covenant on all hands, *ibid*. Witnessing to the world that they swerved not from the principles contained in the national Covenant and League and Covenant, and that they resolved closely and constantly to adhere thereunto, and to all the ends thereof. So that at that time there was still no difference as to the Cause and Covenant, any difference being only in the manner, and not in the matter of that engagement. Thereafter what straits this poor kingdom was reduced to, by the defeat of that engagement, and how unable it was to make resistance to that English army, who, in prosecution of their victory, came to the borders, and entered the same, is notorious to all; where with the whole kingdom being surprised with amazement, and in evident hazard, it was hard in that juncture of affairs to resolve upon any course for preventing the same, or rather incumbent hazard of the kingdom. Whereupon a Quorum

of the Committee of Estates appointed by the said parliament, 1643, were necessitated to take upon them the managing of affairs, and to sue for conditions of peace, not being able to resist by force (the flower and strength of the nation being broke by the said defeat) and to accept the same upon the easiest terms that could be had for the time; which as it was endeavoured upon no other intention, or for any other end but that which they were constrained to by inevitable necessity; so at that time it was generally looked upon as good service, and which at that time was most necessary to evite very great, and otherwise inevitable evils, being either necessitate to condescend to their demands at that time, or otherwise to have delivered the persons of all that did prosecute the said engagements, according to the displeasure of the large treaty, together with the forts and strength of the kingdom. The succeeding parliament for the time, in the year 1649, after proclamation of his present majesty, did send Commissioners to Holland, and afterwards, according to his majesty's desire, to Breda, where there was a treaty concluded by his sacred majesty; wherein he was graciously pleased to approve of the said parliament, in anno 1644, and remanent parliaments, and their proceedings from the year 1641, preceding the said treaty, which was thereafter ratified by his sacred majesty and his parliament at Perth and Sterling; and, after the royal example of his ever-glorious father, an act of oblivion was indulged, whereby all that might be ground of question was buried in oblivion, and pardoned by a general Act of Oblivion in a most full and ample form.

This being the state of public affairs during the time aforesaid, albeit by the first ten articles of the duty, the defender is charged with deeds and public actings, coming within the compass of the said approbation and oblivion aforesaid; yet such firm reliance hath he of his majesty's persisting in his gracious clemency, which does in his royal heart so much abound, that albeit his majesty by his Proclamation, dated the 12th of October, 1660, is pleased graciously to declare, that he has remitted to his parliament the trial of the carriage of his subjects in Scotland during the late troubles: That the late troubles have only respect to the time during the Usurper's possession, and that trial should be taken during that time of the subject's carriage: The defender in all humility conceiving, that it is no ways to be supposed, that his gracious majesty did thereby intend to rip up or revive, or to institute any new trial of old offences, forgotten and forgiven, as is said; especially seeing it is not to be supposed that the bowels of his mercy should be so straitened to this his ancient kingdom, to which he has upon all occasions given so many signal and recent testimonies of his superabundant favour, than they are, and have been to his subjects of his other dominions; to whom, according to his majesty's declarations, he hath granted a full, and free pardon, from

which few, and these only the unpardonable murderers of his royal father, are excluded; for whom, or any guilty thereof, no punishment can be sufficient. And therefore the defender in all humility conceives the said articles, though libelled, are not to be insisted on.

The solemnity of the oaths, both of Covenant and League, will be, as the defender hopes, pregnant presumptions to put an end to all controversy, anent the sincerity of his, as of the church and kingdom, their loyal intentions for the maintenance of the person and authority of our dread sovereign, whereunto they were thereby so religiously engaged; and the constant favour of his acting still by virtue of public orders and warrants of parliament, and their committees, wherein his faithfulness in the execution was also in the like manner approved, will witness, that what he did was not for any private interest, but for the public ends; whereunto he conceived himself engaged in manner aforesaid. Nor was the defender for continuing of these unnatural civil discords, as he did witness by his inclination to an accommodation with Montross, in the year 1645, mentioned after in answer to the tenth article; which albeit fully agreed to betwixt him and the defender, yet he could not obtain the committee's approbation thereof: which is an evidence, that the defender had not the chief sway of affairs, and was always inclinable to peace, religion being secured; like as the carrying on the engagement in the year 1648, though the defender differed in his judgment as to the way and manner, upon the grounds and reasons thereafter expressed in answer to the ninth article, doth clearly evince, that he had not the chief sway in public actings. And what power and interest he had in the year 1649, he did faithfully, according to his bond duty, improve the same for removing these differences betwixt his majesty and his subjects, wherein he was passionately earnest, as shall be made appear in answer to the said tenth article. And after his majesty's home-coming, and during his being in this kingdom; and thereafter, till the enemy had fully prevailed, and that by his articles of agreement he was their prisoner, he faithfully served his majesty, and even during his majesty's absence, did always, and still shall, return loyal duty and good affection to his person, government, and posterity.

And whatever these who are grown up may judge, who only see the unhappy and accidental events that are the effects of the corruption of men, but have not known the counsels and causes which are the two parts of these things necessary to be known to all who would judge of human actions aright; events being for the most part uncertain, and the worst of events of times, through the corruption of agents, or other extrinsical circumstances following upon the best of actions, yet had they been intimately acquainted with the grounds, causes, and nature of the actings while a-doing, the defender is confident that they would have concurred

and been of the same judgment, as being clear, that these proceedings had no native connexion with the sad and unexpected consequences that have ensued.

And now to come to the particular defences to the several points of the subsumption, of the dittay. And first as to the article of the subsumption, anent the words alledged, spoken at the ford of Lions, which are libelled to have been, That it was the opinion and judgment of many lawyers and divines, that a king might be deposed for desertion, vendition, or invasion; and which is alledged to have been meant by the pannel of the then king's majesty; and the presumptions adduced for enforcing that to have been the defender's meaning, are some words alledged subjoined, to wit, Mr. John, you understand Latin. It is alledged for the defender, no ways acknowledging, to the best of his memory, that he uttered any such words; 1. All criminal dittays should contain in them at least year, month and place, otherwise they are inept; Bartol. et D. N. ad L. libellorum ff. de accusatione, because amongst other reasons, 'diversitas loci varra argueret facinora,' saith Battand. Reg. 6, Prax. cum Postangel. &c. But so it is, there is no month condescended on, when the defender should have spoken these words, and therefore the dittay in this article is inept. 2. There is no particular act of parliament in the act libelled upon in the proposition condescended on, which is contravened by the words libelled; therefore the libel in this article of the subsumption is general and obscure, and till the particular law contravened be condescended on, one can receive no answer. 3. The speeches as they are libelled fall not under the compass of the acts libelled on in the proposition of the libel, to infer any of the pains therein contained; because they are but libelled as the narration of the opinion of others, which is not relevant to infer so much, that the narrator is of the same opinion, except it were also libelled, that he did declare his homologation, and that he was of the same judgment, which neither is, nor can be libelled; far less then is it relevant to infer a crime, and so high a crime as treason. For suppose the defender had said, that they are very learned, both divines and lawyers, whose opinion it is, that the Pope is the head of the church, and that he has power to dispense with the article of faith, to depose kings, a horrid opinion, &c. and that it is their opinion also we may merit heaven by good works, and that all Hugonots or Protestants are damnable heretics, and that he had related their words in Latin, as the Latin of that verse of the gloss of the common law, *cap. sicut de excessu prelat.*

‘Restruit Papa salus deponit, &c.  
‘articulus solvit.’

And had said to Mr. John Stewart thereupon, Mr. John, you understand Latin; albeit these opinions of these divines and lawyers be execrably heretical, yet nobody will say, that the

defenders relation of them would have inferred him to have been guilty of the same no more in our case can the relation libelled infer him to have been of that opinion with these divines and lawyers, or in any way thereby to have contravened any act of parliament libelled. 2. The aforesaid opinion is libelled only to have been related in *abstracto* (nothing of our king's majesty who then was). And whereas it is libelled, that it appears the sense and meaning thereof appeared to have been of the then king's majesty, in so far as the defender subjoined to Mr. John Stewart, the words aforesaid, that he understood Latin: 1. The libel in this part is ambiguous; for this may be interpreted, either that it was the meaning of the opinion of these divines which he related, (this seems to be most consonant to the words) or else that his own meaning was, That it was the judgment that the then king's majesty our sovereign might be so dealt with, as is libelled in the latter part of this article, and so the article in this part thereof is ambiguous and inept, and there ought to be no process thereupon. 'Nam libellus (in criminalibus præsertim) nihil ambiguitatis vel obscuritatis continere debet, per cap. Constitut. 6. extr. derig. don. Bet. 3.' If it be understood in the former sense, it is but still relative of the opinion of others; and if in this latter sense, to wit, that it was his own judgment, the presumption libelled of what he spake, to Mr. John Stewart is no way relevant to infer it. 1. Because they held a more obvious meaning, viz. That it might have been, the opinion of these divines and lawyers was related in Latin; and indeed Grotius and Barclaius, who write of that subject, are both in Latin, and that he had subjoined to Mr. John Stewart, Mr. John, you understand Latin. 2. That such opinions being rather the fancy of notional schoolmen, (otherwise not unlearned in their own art) or of such as are doctors notional in the law, if there be any of such opinions, rather than of solid jurisconsults, who for most part do not so much as move these questions, not to be moved: 3. If any such words had been spoken to Mr. John Stewart, they might have had this more proverbial sense: some lawyers and divines are of that opinion, but the subtlety of these questions or opinions is Latin to me, that is, I understand it not; as we say commonly of things we understand not, It is Latin to me; but, Mr. John, you are a scholar, and you understand it. Now it is a rule in law, that where the meaning is doubtful or obscure, that which is the most favourable sense should be followed. L. 9. ff. de reg. juris, and Mathæus de Afflictis, Decisione 265, n. 68, 69, et decis. 307, n. 13. And when these words are ambiguous, the declaration of him who uttered them should be acquiesced unto, Mendocius, consilio 197. And the defender is ready to declare, that if he had ever spoken such words, he was very far from any such meaning as is libelled against him. Nor is it in any way presumable, that any rational man, who had

the honour to know his late majesty, could have made application of any of these three causes to so worthy and illustrious a prince, seeing the said Grotius, Barclay, and others that write upon that subject acknowledge, yea, it is obvious to common sense, that hardly can they fall out in the worst of princes, if he be but *compos mentis*. And as to the presumption that follows, that the defender meant by the late king's majesty, because of the condition wherein the kingdom was for the time; 1. It is far more presumable that the kingdom was in such a condition of affection to his majesty's sacred person and authority, as at that time none durst have uttered what might reflect thereupon, seeing it is libelled to have been shortly after the subscribing of the covenant, wherein they had solemnly bound themselves by the oath of God to maintain his majesty's person and authority. 2. His majesty by his royal judgment in the act of oblivion, 1641, has presumed the loyalty of his subjects both in their intentions and proceedings in these times, which is *presumptio juris, et de pre*. As for the defender's prosecuting of Mr. John Stewart, 1. It was a judicial process and legal act, and so can be no imputation to him, wherein the process was laid in so fair a course of law, that he was condemned, not only upon clear probation, but his own confession: and yet the words whereupon he was indicted and convicted were far different from these words, as they are here libelled, otherwise the defender would never have pursued it.

Ultimo, Adhering always to the alledgeance above propounded, humbly protesting, that they may be first discussed: and whereupon it is craved, he may be assolized in *hoc libello*, because by act of parliament in anno 1641, amongst the imprinted acts anno 70, the same service is approved and he exonerated. It is alledged, that the defender ought to be assolized from the whole crimes in the first article, because, after the time libelled of the alledged committing of the same, his late majesty of glorious memory granted that never-to-be forgotten act of indemnity and oblivion in anno 1641; which did proceed upon the preceding treaty with his majesty, and which is solemnly confirmed by his majesty himself in person, and his three estates in his parliament, 1641, 6th act thereof; wherein his majesty, for himself and his successors, does promise in *verbo Principis*, never to come in the contrary of that statute and sanction, or anything therein contained; but to hold the same in all points firm and stable, yea, and to cause it to be truly observed by all his majesty's lieges for ever. Hereupon the defender doth confidently rely, for all that is libelled as committed by him in this article, or any other preceding that time, is being confident it is the greatest imaginable security that he and the rest of the lieges of he land can have.

As to the second article, and whole head thereof, 1. Neither day, month, nor Year of God are condescended on; and therefore so



general, that it is inept. 'Nam generalitas parit obscuritatem, Marent. part. 6. spec. et de libel. oblat. quomodo concip. et per textus 'ibi citatos.' 2. It is not contended which of the Acts of Parliament libelled this article, and the several heads thereof, contravenes, which is a general ineptitude and nullity in this libel. 3. As to the first; if that article anent the in-taking of the house of Airly, cutting and destroying the planting, and demolishing the houses; 1. It is not relevantly libelled, in so far as it was libelled that the house was kept for his majesty's service, but doth not contemn that service now. 2. Is it libelled that there was any in it had a commission from his majesty, without which it has not any colour of relevance? 4. The defender never had any private quarrel, nor personal prejudice against the noble lord James earl of Airly; but if his marching to that house be meant of that which was in A. D. 1640, it was by virtue of, and in obedience to, a commission put upon him by the Committee of Estates for the time: nor was the said house, at his arrival thereat, kept for his majesty's service, as is (though wrongfully) libelled. But before that time was surrendered to the earl of Montross, who had put colonel Sibbald to keep the same for the king and country's use, and which col. Sibbald, upon sight of the defender's commission, did abandon the said house. And if there was any planting cut, it was alienarily some few shrubs and bushes, which the defender could not hinder, for hurting to the soldiery; and though the defender's commission bear power and warrant to demolish the house, he was so far from stretching or fully executing the same, that he did not only slight the house and delayed a long time to do the same, in expectation that the lord Ogilvy should have procured a countermand from the Committee, and did slight it till he was passed all hope of obtaining the same; and this as is hoped will be acknowledged by the said noble earl; neither did, so far as the defender knew or could hinder, the earl, his friends and followers, sustain any other prejudice than what was usual, and what all places are ordinarily obnoxious to, where armies or parties of soldiers come: but however it is not relevant, as said is.

Tertio, That part of the said article, though it were true, as it is not, is no ways relevant to infer the conclusion of the Dittay, there being no law nor statute libelled on; that for cutting of timber, or demolishing the houses of private persons (though done upon private quarrels, as this was not) infers the pain of treason.

As to that part of the article, anent the burning of the house of Forthier, beside the exceptions against both the points thereof, alleged before in the beginning, it is not relevant to say, that the defender seized thereupon to infer any crime, except it were libelled he seized by force, for he might have entered in *vacuam possessionem*. 2. *Non relevat* to libel, that those under him did seize thereupon, or

raise fire therein, except it were libelled that the defender had given express order or warrant to raise that wilful fire; who, as he gave not order therefore, so he was not present nor near the place, nor knew any thing thereof, till after the house was burnt, and *noxia caput sequitur*. 3. In the Acts of Parliament libelled on, anent burning and wilful fire-raising, the same can only be understood of burning and raising of fire on private feuds, and for particular revenge in time of peace, and is not to be extended to such deeds done in the heat and fury of wars, seeing *inter arma silent leges*.

And as to the aggravation of the defender's hatred against the earl, merely for his loyalty to his majesty, it is *gratis dictum*, and against that presumption, *qua unusquisque præsuntur bonus*, and against that loyalty to his majesty, that is hoped shall more and more appear in the defender.

Lastly, The defender ought to be assolvied from the said article, and all deeds therein mentioned. Because the same preceded the act of oblivion, A. D. 1641, whereby all things that did fall forth in these tumultuous times, whether prejudicial to his majesty's honour and safety, or to the laws and practices of the church and kingdom, or to the particular interests of the subject, are buried in perpetual oblivion, as more fully is contained in the said act.

3. As to the third article, anent the besieging of Dunbarton castle, and transporting cannon and ammunition out thereof:

It is alleged for the defender, That the assailing of the said castle is not relevant to infer the conclusion of the Dittay, because, as is before alleged, none can be declared traitors, but those who have contravened a special act made under the pain of treason. But so it is, that none of the particular acts of parliament, whereupon the proposition is founded, mentions any thing against those who assault the king's castle, nor does any of them infer the pain of treason therefore: but only the 25th Act of Parliament, 6 Jac. 6. intitled 'Sundry Points of Treason,' by the which acts they only are to be punished as traitors, who assault the castle or places where the king's person is, and that without warrant of estates; but this neither libelled, nor was the king's person in the said castle at the time of the alleged assaults thereof; nor did the defender assault and lay siege to the same without warrant from the estates, but by their express order and commission. And the truth is, the defender himself did not appear before the said house, till the said sir John Henderson being straitened with the siege, sent for the defender, and offered to surrender the house upon honourable conditions, which the defender suffered him to make himself; and which were accordingly kept, not without some difficulty, the inhabitants of the town, by reason of prejudice done to them, being highly incensed against the said colonel.

As to that part of the said article, anent the

transporting of the king's cannon and ammunition, not relevant to infer the conclusion, none of the acts libelled on concluding against any such fact, the said crime of treason; and the truth is, the defender did never transport any cannon or ammunition out of the said castle, but two cannons, which the duke of Richmond, heritable keeper thereof, gifted to the defender, and which he would never have gifted, if they had not been his own, and not the king's. 2. The defender ought to be assoziated from the said article, and all deeds therein contained, the same having also preceded the said act of oblivion, A. D. 1641.

4. And as to the fourth article of the Dittay, anent the defender's calling, or causing to be called a Convention of Estates, A. D. 1643, entering in league with his majesty's enemies, imposing excise and subsidies on the kingdom, raising an army, entering England therewith, fighting for and with the rebels there; it is answered, That the whole points of this article of the Dittay are charged personally on the defender, so contrary to the notoriety of the matter of the fact known to both kingdoms, and to his majesty's commissioner's grace, and to the whole parliament; yea, to the fifth Act of Parliament, 1641, relating and approving all the acts that are made points of this article; that there needs no more but propose as known to all, and to repeat out of the said law and act of parliament, what is therein libelled, to evince that they are not the defender's personal deeds; but the committees (commissioners established by his majesty), convention of estates, and of the whole church and kingdom of Scotland, and approved by parliament, 1644, in the said fifth act thereof. First then as it is notorious, so it is clear by that act, that the said convention of estates was called not by the defender, as is libelled, but by his majesty's privy-council, commissioners for conserving the articles of the treaty therein mentioned, and commissioners of common burdens, all established by his majesty's authority A. D. 1641, which conservators concerning that article in the large treaty, bearing the kingdom of Scotland their desire for unity in religion, and conformity in church-government, as a special means for conserving of peace betwixt the two kingdoms; in answer thereto his majesty, with advice of both houses of parliament in England, doth declare his approbation of their affection in their desire of having conformity of church-government between the nations; and as the parliament had already taken to consideration the reformation of church-government: so they would proceed therein in due time: and this was one of the main grounds whereupon both houses entered the said league. (2.) That the enacting and entering the said league and covenant, was an act of that convention of estates, not the defender's personal act. (3.) That the league and covenant was entered in with the two houses of the long parliament, and assistance given to them in fighting with or for their army,

or otherwise, which is libelled fighting with rebels. The point of fact being thus cleared in opposition to the Dittay. 2. It is alledged, That the first two members of this article are subsumed under none of the acts of parliament libelled on in the proposition; there being no act of parliament libelled against meetings, bands or leagues in general; or in special betwixt the two nations or estates thereof. 3. As to the remanent members of the article, they can no ways be relevant (with all submission) except it were qualified, that the two houses of the long parliament, to whom the assistance libelled was given, that they were enemies and rebels; but that the defender is confident it will not be said, because by his majesty's act of oblivion, 25 April, 1660, his majesty, after his happy restoration, declares, that what was acted even against his majesty, and his royal father, by his subjects in England during these times, thereafter shall not be called in question at all, so much as to the prejudice of their reputation, in manner at length contained in that gracious act. And how loyal the long parliament was, did appear in that the usurper durst never attempt anything against his late majesty's person, till they were broken; as also what loyalty the secluded members of that parliament have (as became them) shewed to his majesty in his just and glorious restoration, is known to all Europe, to their eternal commendation and renown: No doubt as from conscience of their oath of duty and allegiance, so of the oath of God whereunto they bound themselves to maintain his majesty's person, authority and greatness, as well as religion, in that covenant. 4. All the foresaid deeds, which are the members of this article, viz. The calling the foresaid convention of estates, as being the act of the foresaid council and commissioners, the entering in the league and covenant, raising of the army for assisting the two houses of parliament of England, imposing excise, &c. as all being acts of the said convention of estates, together with the same convention of estates, are all approved by the said 5th act of parliament, 1644. In respect whereof the defender ought to be assoziated from this whole article, and all the crimes contained therein. 5. Not only is the said calling of the said convention of estates, and the said convention entering in the league and covenant, imposing of excise, raising of forces for the parliament of England, and remanent acts of the said convention approved by the said 5th act of parliament of 1644; but by his majesty's treaty of Breda, and the act of oblivion, in the parliament holden at St. Johnston and Sterling, in anno 1650 and 1651, or either of them, all things done during these tumultuous times, intervening betwixt the said act of oblivion 1641, and his majesty's home-coming 1650, whether prejudicial to his majesty's honour and authority, or to the laws and liberties of the church and kingdom, or to the particular interest of the subject, are buried in perpetual oblivion. And by the said treaty and act of

ratification of the said parliament, or one or other of them, the said parliament 1641, and all acts thereof are ratified; and so amongst the rest, this which is the 5th act, which approves all the acts, whereupon this 4th article of the dittay is founded, and therefore the defendant ought to be assolizied therefrom.

5. As to the 5th article, aent the burning of the house of Menstrie, in anno 1645, the defender is so innocent thereof, that if it were libelled relevantly, he needed no other defence but a simple denial; but the truth is, that it hath been burnt by some of the soldiers, commanded by major-general Bailey, for the time, upon the greatest provocations that could be; two parishes, viz. Muckart and Duller, having been burnt the night before, and several, both men, women and children, cruelly killed by the concourse of those that were in that house. But it is no way relevantly libelled, in so far as it is libelled, that the defender, or others under his command, burnt it: 1. Because there is no act of parliament, of all the acts libelled upon in the proposition, whereupon this can be subsumed; especially the acts aent the raising of fire, upon which (if upon any) it seems it is particularly founded, there is no such odd extension of that so high a crime, as to make any guilty of it by committing of it by others, who are under their command. And this were a very universal, terrible concernment; and in the present case were most dangerous and unjust, that a commander should be holden to answer for all the illegal deeds done by his soldiers. 2. It is against common reason, the common law, by which this therefore, is well established that '*dicta propriis tenent auctoritas, et noxa caput sequuntur*;' and therefore is not relevant that the defender burnt it by himself, or others by his special direction, or particular order for that effect.

4. Though it were made relevant in manner aforesaid, yet the Dittay is inept, as to this article, and the defender ought yet to be assolizied therefrom, because the year of God is only libelled, to-wit, the year 1645; whereas not only the month, as in all criminal libels, '*per L. libellorum ff. de accusationibus*,' and the doctors treating thereupon, but the very day ought to be condescended on; for the omission of the day prejudices the defender of his defence; especially his *alibi*, which he might and would propone, if the day were condescended on; that being required, the day ought to be condescended on, otherwise the libel is inept. '*Nam Libellus debet continere non tantum annum et mensem, sed et diem si reus id requisierit cum probaturus suum alibi*. Dam-haud, cap. 3. num. 4. 5. et Battaylier Reg. 6. num. 4. Maranta in spec. de bel. Ohl. 3. num. 12. per bark. in L. Si quis ruses Col-umn. 3. in fin. de publ. judic. et Jason. in L. Arbitraria 2 sect. Si quis occisi ff. de eo quod Crito loco.' But so it is, that if the day were condescended on of the said burning, the defender might, and if need were, would offer to prove, that he was that day, during all the time

of the burning, *alibi*, at a considerable distance from the same place.

3. Absolvitur, Because lieutenant-general Bailey, at that time, when the house was burnt, had the command of the said forces (adhering always to the former defenses against the aptitude and relevancy of this part of the dittay, and expressing the same that may be discussed *ante omnia*): In respect whereof the defender ought to be assolizied '*ab hoc libello*,' at least there can be no process upon that part of the dittay, as it is now libelled. 4. Albeit the defender had burnt, or given direction only to burn the said house, as he had not; yet by special act and commission of lieutenancy, granted him by the parliament 1644, he was empowered to pursue the Macdonalds, and their adherents and accessories, with all kind of hostility, by fire and sword, (with a dispensation) with slaughter, mutilations, raisings of fire, assailing of houses, taking of prisoners, and other inconveniences whatsoever, that should fall out in the execution of that commission in pursuing of them; as the said act and commission may at length bear, and which commission is ratified by his majesty in the treaty at Breda, his ratification of that session of parliament 1644, among the other parliaments and sessions thereof ratified by his majesty, all after 1641, and preceding his return. But so it is, that the said Macdonalds were at that time, at the burning of the said house, joined with Montross, and it was in pursuance of both that the said house was burnt, as is notorious, (and, if need be, the defender will prove) and therefore though he had burnt, or given direction for the burning thereof, he ought to be assolizied.

5. By act of parliament, 30th act, 22 March, 1647, it is statute and ordained, that all his majesty's good subjects shall be altogether freed, and liberate in all time coming, from being any ways called, convened, pursued, troubled or molested in judgment, civil or criminal, or out with the same, for any deed done, or to be done by them, against the persons, lands or goods, of such as have, or shall be in the rebellion; (by which it is notorious, that the same aimed opposition, made by the deceased marquis of Montross and the said Macdonald, and others under his command, to the estates, is understood) during the time of their being in the said rebellion, or have been, or shall be guilty with the rebels in their wicked courses, or of any of them, who came under the first or second classes of delinquents, contained in the 5th act of the 5th session of that parliament holden at St. Andrew's in the month of January, 1646. But so it is, the defender offers to prove, if need be, that a son of the earl of Sterling, named Charles or John Alexander, who had, or either of them had right to Menstrie, had joined with Montross and those under him; and so came under the second class of the said 5th act of the 5th session of parliament, 1646: Or at least, went or sent into their leaguer, or without compulsion entertained

them in the said house; and therefore the defender ought not to be pursued, even though he had burnt, or given direction to burn the said house (as he no ways did), and being pursued, ought to be absolved from this article; like as it is *conjunctum* alledged for the defender in fortification of the said act, That the same is ratified by his majesty's large treaty at Breda, as being one of the acts of that session of parliament, 1617, which amongst the other sessions of parliament, and acts thereof, since the year 1611, and preceding his majesty's return, in anno 1650, are ratified by the said treaty, as also by the act of ratification, at St. Johnston's or Sterling, in anno 1650 and 1651. By which ratification (or ratification of his majesty by the treaty aforesaid) the said act of parliament 30, in anno 1647, comes (as a most solemn remission granted by his majesty, and whole estates of parliament, to the persons therein contained); and so like as if every one of them had got a particular remission so solemn, it had been an uncontrovertible remission for what were therein contained; so must it now be, being in effect of the same nature and virtue, albeit many being included in one.

6. By the Act of Oblivion at St. Johnston's or Sterling, in the year 1650 or 1651, all acts of hostility, whether between the king and his subjects, or between subject and subject, and what things fell out in these times, betwixt the year 1611, and his majesty's return, whether prejudicial to his majesty's honour and authority, or to the laws of the kingdom, or the particular interest of his subjects, are buried in oblivion. In respect whereof, though the defender were accessory to the said burning, as he is not, yet he ought to be absolved.

As to the sixth article, anent the taking of the house of Towart, belonging to the land of Lamond, and the house of Oseoge, belonging to Oseoge; and aiter articles of capitulation drawn and subscribed by Ardkinglas, and others under his command, trust and assurance, murdering a great many of Lamond's and Oseoge's friends: as this is no way true, (the defender being altogether innocent thereof) so it is no ways relevantly libelled. For, 1. Neither day nor month of these deeds are comprehended on. 2. The altermity by others under his command, not relevant to infer a crime, far less treason against the defender, for the reason contained in the first answer to the former article, viz. That there is neither act of parliament libelled, nor common law, ordaining a man to be liable to a pain, far less the highest of pains, for deeds or crimes by those under his command, except he gave them special direction. But every one is to suffer for his own fault, as more at length is contained in the said answer, which is here repeated. 3. *Non relevat* those for whom he is unsatisfiable, for the same reasons, because every one is unsweable for his own fault and crime. 4. *Non relevat*, that others whom he might stop, did it; because there is neither any act of parliament libelled on, ordaining any to be un-

sweable for all the deeds of those he might stop (especially the act against murder under trust, bearing no such thing); nor is there any law nor reason for the same, but 'delicta prius tenent authores,' as hath been said; and no ways granting the defender, could have stopped them: for the truth is, he could not, and was not near them, when what is libelled was done: and albeit indeed, it be 'contra officium charitatis,' not to stop any doing of mischief, if any one may safely do it, yet that it comes under the compass of law to infer a crime, especially treason, cannot be affirmed.

5. Taking of the house of Towart and Oseoge, is not subsumed upon any of the acts of parliament libelled, there being none of them, anent the taking in of houses belonging to the lieges, and so is not relevant to infer any of the crimes contained therein. 6. The alledged killing a great many of Lamond's and Oseoge's friends, after the assurance given by Ardkinglas, is no ways relevantly libelled, to infer the crime of slaughter under trust, because by the act of parliament, Jac. 6, par. 11, cap. 51, of slaughter under trust, upon the which it is founded, slaughter under trust, is only when the party slain is under the trust and assurance of the slayer, which is no way here libelled; but that the persons who are libelled to have been slain by the defender, were under the trust of another, to-wit, Ardkinglas; who if he, or any other under the defender's command, have done any thing against their own assurance, they are to answer for it.

7. The defender adhering to these defences, and craving that they being against the relevancy be first discussed, repeats his former answer founded upon his commission of lieutenantcy therein mentioned; for they who are designed Lamond's and Oseoge's friends, were the Macdonalds, or their adherents and accessories, (as is notorious, and the defender, if need shall be, offers to prove it) whom by the aforesaid commission he had power to prosecute with fire and sword, with dispensation of slaughter, and raisings of fire, in manner at length contained in the commission; which amongst the other acts of parliament, 1614, is ratified by his majesty in his treaty at Breda, as is alledged in the said answer, which is holden herein repeated; and therefore the defender ought to be absolved from this article. And truly what cruelty was exercised, was by the lord of Lamond himself, against the heritors and other inhabitants in the sheriffdom of Argyle; for the which, upon a supplication given in to the king's majesty and committee of estates at Sterling, in August 1651, he was imprisoned within the castle of Sterling, till after trial, justice should have been done upon him; but was released by the English when they took the castle, with the other prisoners. However, the defender is confident, as it is known, so he shall make it appear, if need be, in the other process whereunto this relates, and wherein it will be more pertinent; and yet the day and time of the committing of the deeds

mentioned in this article not being condescended on, as it ought to be when required by the defenders, that he may propose his *alibi*, he offers to prove, if need be, that he was *alibi* the time of the committing of the said deeds, at a very great distance, to-wit in England. Like as his majesty, by his treaty at Breda, hath ratified and approved the acts of parliament; and his majesty, and estates of parliament have ratified the said treaty, and past an act of oblivion, of all former deeds done by the subjects, which secures and indemnifies them for any former actings in respect whereof he ought to be absolved.

As to the seventh article made up of several members or parts; as, 1. Anent the men slotted murdered at Lockhead and Dunnaverly. 2. Anent the aggravation added thereto; anent an old man begging his son's life, and denied him. 3. Anent the sending two hundred men from Ilia to starve in Jura. 4. Anent the taking of the person of col. Kittoch out of a ship in Leith road, wherein it is libelled, that he had been brought by order of parliament.

It is alledged against the seventh article, that, 1. The first part thereof (anent the men alledged murdered at Lockhead and Dunnaverly) is no ways relevant, not only in respect that the particular month and days whereupon the same should have been done, are not condescended upon, but also in respect there is not one particular person by name, and surname, whereby he might be known, condescended upon, against whom the deeds libelled should have been committed; without the which, this part of the article cannot be sustained as relevant; it being contrary to all law and practice, that murder in general, without naming the persons murdered, should be sustained as a relevant ditty against any. 2. The slaughter alledged, committed upon those in the house of Lockhead, is not relevantly set down upon the acts of parliament libelled, in so far as there is no assurance libelled to have been given to them, to bring it under the act of murder under trust, and there is no other act libelled under which it can fall. 3. It is alledged, that the defender cannot be charged with any of the deeds libelled in the said first part of the article (though they were true and relevantly libelled, as they are not), because the expedition made against the rebels in Kintyre, in the year libelled, was by David Lesley, and those under his command, against each, who, contrary to his majesty's order sent to them at that time, commanding them to lay down arms, and contrary to their own engagements not to join with Alistair Macdonald, did notwithstanding continue in arms rebelliously, (as was then declared by the estates of parliament) resisted David Lesley in the execution of his said commission against them; who therefore after defeating of them in the field, who took them out of the said houses of Lockhead and Dunnaverly without any capitulation, and disposed of them, as the council

of war then present with him thought fit, (which is notorious, and the defender offers to prove if need be;) for which, and other his services, the said David Lesley got the parliament's approbation in anno 1648, as the said approbation and exoneration bears date; which will clearly prove any thing that is herein alledged. And therefore the defender, nor any in his company at that time, cannot be charged with any deeds libelled in the first part of this article, but ought to be absolved therefrom. 4. The defender repeats his third defence made to the fifth article founded upon his commission of hentenancy; the persons mentioned in this article, against whom the deeds are libelled to have been committed, having been the Macdonalds, or the adherents and accessaries, which is notorious, (and the defender offers to prove, if need be) to prosecute whom he had the commission containing dispensation, and which was ratified in manner mentioned in the said answer; like as he repeats the fourth and fifth answer made to the said article, in respect whereof he ought to be absolved therefrom.

It is alledged against the second, third and fourth members of this seventh article, that they are no ways subsumed nor cannot be subsumed under any of the acts of parliament libelled, and therefore the ditty herein is inept, and the defender ought to be absolved therefrom (and yet in point of fact they are but mere calumnies). As to the second part (anent the said old man and his son) it is no ways relevant, not condescending on the persons names, and therefore can receive no other answer, but that it is a mere fiction to make the defender more odious, who ingeniously professes, that he never heard of such a thing till he saw it in the libel. The third part of this article hath no better ground than the second; and the defender desires, that for clearing his innocency of the fact libelled therein (anent the sending of two hundred men from Ilia to starve in Jura), that the gentlemen in the said Isles may be examined upon the truth of the matter. It is alledged, that the fourth part of this article, anent col. Kittoch, is of the same nature with the former two, and therefore the simple relation of the truth is sufficient to refute the falsehood thereof; which is shortly this, viz. That col. Kittoch was not brought to Leith, either by order of the committee of estates or parliament; but being taken prisoner in Ilia, by the forces under the command of David Lesley, and delivered to the defender, the defender put him aboard in captain Brown's ship, who undertook to deliver him at Dunstaffnage. But captain Brown finding the opportunity of a fair wind to Leith, to which he intended, and not willing to lose the same, did not go to Dunstaffnage, but came straight to Leith road; and immediately gave the defender notice, that he had his prisoner aboard; whom therefore the defender received from him, and sent him to Dunstaffnage. And the defender desires that captain Brown, who lives at Weems, may be examined upon the

truth of this matter; by whom he offers to prove this, if need were.

And whereas it is libelled, that col. Kittoch was hanged, it is true; but it is also true, that he was condemned to die in a justice or lieutenant-court judicially; which is notorious, and the defender offers to prove, it need shall be: so that this can be a ground of no crime nor dittay whatsoever; but however the defender ought to be assoilized therefrom.

8. To the first member of the eighth article that notwithstanding the manifold acts of dignity, favour and honour conferred upon him by his then dread sovereign; his majesty being reduced to great straits by that army of sectaries, and having cast himself over in the hands of the army of the Scots subjects for shelter and preservation of his royal person; nevertheless, the said Marquis being chief ring-leader of that factious party, who then swayed the estate of affairs both in counsel and army, did so contrive and complot, and by his influence so prevail, that after all fair offers made by his majesty and his desire to have come and lived in Scotland, till all differences in both kingdoms had been settled, an act of parliament was made, for abandoning his majesty to the mercy of his inveterate enemies, the said army of sectaries.

It is answered, that as he must continually acknowledge the late king's and his present majesty's acts of favour, honour and trust; so must he still deny, as he safely may in the presence of God, who is the searcher of all hearts, and of all men, that he never entertained any disloyal thought, or contrived any treasonable plot or machination against the sacred person, dignity or authority of his late sovereign, or of his present most sacred majesty; and therefore with a clear conscience may answer this dittay: 1. That the same is not special nor clear, but very obscure and general, how and in what manner he was chief ring-leader of any factious party. 2. Who that factious party were; nor, 3. By what deeds, and how he swayed the state of affairs: nor, 4. Those means, by which, and upon whom, he procured his influence to prevail. 5. The alledged offers made by his majesty are not expressed; and therefore the said articles are altogether general and inept.

The act of parliament, which the defendant is alledged to have procured to have been made is not produced, nor indicated by number or rubrick, nor does the defender know any act of the tenor and title libelled.

And the defender in humility conceives, that it is not consistent with the act libelled on, in the opposition of the dittay, discharging persons to impugn the authority of the estates of parliament, to term the members thereof (especially in making an act, which being carried by plurality of voices, as the deed of the whole, and especially such an act as is mentioned in the libel, where there were none, or very few of a contrary judgment) a factious party.

13. The cause of the first member of the

said eighth article, anent the pretended act of parliament, as is libelled, for abandoning and leaving his majesty to the disposal and mercy of his enemies, the sectarian army, does arise from the acts of parliament (as clearly appears), and can be subsumed under none of the acts of parliament libelled: For if the tenth act of parliament, 1647, be understood and meant as the act libelled, that being an act of parliament, the defender humbly alledges, that an act of an acknowledged lawful parliament should be made a crime of accession, whereunto a member of parliament shall be indicted, especially for so high a crime as treason, is without ground of law or justice, and is hoped the honourable parliament will no ways sustain it; and therefore, that he needs say no more now in confirmation hereof.

14. Likewise, all that is in that act and substance thereof, being the estates of parliament their declaring their concurrence for his majesty's going to Holmby-house, or some other of his houses in and about London; and that expressly to satisfy the desire both of his majesty himself, and of his two houses of parliament in England; and there to remain, not under the power of sectaries, but with such attendance about him as both houses should think fit to appoint, with respect also had to the safety and preservation of his royal person: and the estates therein do also declare against all harm and prejudice, violence or injury to be done to the same (as indeed it was horrid to think that any on earth should have done), or prejudice to his majesty's posterity: But thereafter it is clear from the fourth and seventh acts of the parliament, 1648, that the sectarian army disobeyed, and threatened the houses of parliament, imprisoned and banished faithful members, and by a sudden surprize, violently seized upon the person of the king's majesty, carried him from his house at Holmby against his own will, and declared resolutions of both kingdoms, and kept him under their guards; till at length, by their power and prevalency, he was committed, and kept close prisoner at the Isle of Wight: this being the true case out of the express words of the acts before cited.

As to that declaration, act 10, parl. 1647, the defender alledges, 1. The act bears express, that it was to satisfy his majesty's own desire. 2. That it is homologate and approved by the parliament, 1648, in so far as by their fourth act, intitled, "Anent their resolutions concerning the breaches of covenant and treaties betwixt the kingdom of Scotland and England, and demands for reparation thereof;" finds the violent seizing on his sacred majesty's person, and taking him away from Holmby-house, as appears by act 7, by that army, against the resolutions of both kingdoms, a breach: And amongst the reparations, they desire expressly, that conform to the former desires of this kingdom, the king's majesty may come with honour, freedom and safety to some of his houses in or near London, that the parliaments of both

kingdoms may make applications to him. And in their seventh act, intituled, "A declaration of the parliament of Scotland, to all his majesty's good subjects of this kingdom, concerning their resolutions for religion, king and kingdom," &c. after they declare, that violently seizing on his majesty's person, and carrying him away by that army, against the resolutions of both kingdoms, to be a breach: And they declare, they intend to send to the two houses of the parliament of England the desires following; which they call necessary and just desires for religion, his majesty's good, and peace of these kingdoms: whereof this is one, That conform to the former desires of this kingdom, the king's majesty may come with honour, freedom and safety to some of his houses in or near London; and declares, that thereafter they will endeavour it: And act 8 in their desires to both houses of parliament in England, the same desire is repeated, conform to the former desires of this kingdom. By all which it is clear; that the seizing upon his sacred majesty's person, was the violent deed of that wicked army, done with a violent surprisal against the declared resolutions of both kingdoms. And that his majesty's coming to some of his houses in or about London, where both kingdoms might make application to him, conform to his kingdom's desire; which is, that wherein the estates declare their concurrence with his majesty and both houses of parliament in England's desire in the said tenth act, is approved as a just and necessary desire for his majesty, and accordingly enacted among that parliament, 1648, their desires to the said houses; and declare it should be endeavoured, if refused: so highly it is approved by the said parliament. In respect whereof, especially of the standing acts of parliament, 1648, the defender humbly craves, That albeit the article was relevantly, distinctly and clearly libelled and subjoined on some of the acts of parliament in the proposition condescended on, as he humbly conceives it is not, yet he ought to be absolved therefrom.

And for further clearing what was the ground and occasion of that act, and the reasons inducing the defender and the parliament at that time to go along therein, and how little ground there is for challenging him thereon, it would be considered, That when the late king came to the army before Newcastle, the defender was in Ireland, by commission from the parliament, 1646; and that his majesty's declarations anent the grounds of his resolution in coming to the Scots, was sent both to the committee of estates in Scotland, and to the parliament of England; so that the same being printed before the defender came to Newcastle, he neither did, nor could know, any other ground of his coming, nor what was contained in his declaration, viz. his gracious resolution to comply with his parliaments in both nations, and those entrusted by them, in every thing, for settling of truth and peace; and that he would totally commit himself to their councils and advices.

Upon which terms, both the committee of Scotland, and officers of the army, declared to his majesty, and to the parliament of England, that they received him, and all this before the defender came from Ireland to Newcastle; from whence his majesty sent him with instructions to the commissioners at London (of which commissioners the defender was one also) to hasten the propositions; and privately commanded the defender to take the advice of the duke of Richmond, and marquis of Hertford, anent what might concern his majesty; and particularly, if it was fit that the Scots army should declare for his majesty; whose judgment and opinion was (which they conjured him to tell his majesty), that such a course was the only way at present to ruin his majesty: for that he himself knew, that neither the nobility nor gentry of England who attended him at Oxford, wished him to prevail over his parliament by the sword, and much less would they endure the Scots army to do it; and that it would make all England as one man against him. And that it was their earnest request to his majesty, by any means to give way to the propositions. Which advice he not only faithfully told to his majesty at Newcastle, and many others there, and to our gracious sovereign who now is, when he was in Scotland; but also being in the Tower, he entreated the Lieutenant thereof to propose for him, that the marquis of Hertford, who was then alive, might be examined in this matter; which was put off from time to time, because of his majesty's great affairs. And as it is most certain, that neither independent nor sectary was able to carry one vote in the house at that time; so it is notorious, that they who tendered his majesty most in England, were for disbanding the Scots army, and his majesty's staying in England: wherein the defender appears to the particular knowledge of the earl of Lauderdale, London, sir Charles Erskine, and the rest of the commissioners then there. And it is of truth, which all know, that so little fear, suspicion and jealousy there was of what followed, that the great fear of his majesty's friends in both kingdoms was, that if he fixed on his subjects in Scotland, all England would be against him, and probably cast off his government and interest for ever: So that under what representation soever the matter may now appear, because of the sad sequels, yet to them who know the matter, as it was there stated, what declarations and assurances there were from the parliament of England, and how little fear of the prevalency of sectaries; it did appear to be an act, if not of necessity, at least an act very expedient and convenient for the time, otherwise many who did dissent thereto, would never have condescended; and consequently the defender's concurring therein, upon such probable grounds, can be no such crime as is libelled; nor is it relevant to answer the conclusion of the title.

To the second member of this article, bearing, that under pretext for satisfaction for the

arrears of the army, he went to London; and there treasonably gave up, at least condescended to the up-giving of his dread sovereign and master, as being impowered so to do by the kingdom of Scotland:

It is answered, 1. This member is not relevant, because neither the time of his going to London, nor of his being there, or the persons to whom he condescended to give up, are particularly mentioned and set down.

By which generality he is precluded from several defences which might arise to him if the ditty were clear; and it is a principle in common law, and of constant practice, That 'non est vagandum in crimine, sed debet certum et speciatum dici:' for that 'dolus et error verisuntur in generalibus.'

2. No ways acknowledging the relevancy of the subsumption herein, upon any of the acts of the proposition, till the same be clearly condescended on; and craving the same may be first done, opposes the act of parliament: and the truth is, while the defender was at London, there was nothing spoken at all by him of leaving his majesty in England, except what he was expressly commanded by his majesty to speak to Richmond and Hertford, as aforesaid.

To the third member of the eighth Article, bearing, That in a joint committee of both kingdoms, where the English questioned, whether the Scots army would concur with them in their said treason and treachery; the defender after many arguments used in their favour, earnestly requested them to have patience for a little time, and that it would appear how far they intended to concur. And that within few days thereafter there was a declaration and vindication emitted in name of the said army, holding forth, That in case his majesty did not condescend to all the desires of both kingdoms, which were no less than divesting himself of all regal power, civil, ecclesiastical and military, they would deliver him up; which immediately upon the receipt of two hundred thousand pounds the defender and they did:

It is answered, That adhering to the former defences anent the subsumption, and repeating it here, this member, although it were rightly subsumed, as it is not, is most irrelevant and general in time, place, person and speeches; mention being made of many arguments, and never a one produced, and of a question and answer, out of which (even as libelled) treason cannot be inferred, viz. That the defender requested them to have patience a while, and it would appear how far the army intended to concur; but within few days after, the army declared themselves in manner as aforesaid; seeing these alleged words of the defender, as they are indefinite and general, so the most they could infer is, That in a short time it would appear whether the army would concur or not. And what can from thence be inferred, as to any thing the army did? If they have outshot their duty, as it was in regard of him, with the speaking of these words, a future contingent, wherein the defender had no casualty; so they

must answer for themselves, and not the defender.

And for aught he knows, there never was any such declaration emitted; neither should there be any captious use made of words, if there had been any such words spoken, as there never was, especially to infer his treason; for that *lubricum lingue* is oftener a frailty than a fault; and that by all doctors of both laws it is constantly held, that 'verba debent intelligi ne sonent in delictum.' And that *in dubio* they should be interpreted *à proferenti*. And therefore no ways acknowledging the words and deeds libelled, except in so far as concerns the defender, note to the declaration, and as the circumstance libelled, That the delivery of his majesty was immediately after the payment of 200,000*l.* it is clear that there was no respect to that money in what was done therein, by the act of 7 Parl. 1648, wherein the estates there declare, That money was never the cause nor motive of any of our undertakings and resolutions, whatever our enemies had falsely suggested of that kind. And lastly, adhering to his former defences, opposes to this whole article, the treaty at Breda, and the acts of parliament of oblivion and ratification.

As to the ninth Article, and whole first member thereof, bearing, That the defender opposed the proceedings of parliament, 1648, by arguing, voting, and after the resolutions of parliament were passed in an act, in protesting against the same:

It is alleged for the defender, 1. It is not condescended, under which of the acts of parliament libelled on in the proposition, this article is subsumed; and therefore the libel, as to that member of the article, for arguing, voting, and protesting, is inept, and the defender hath just reason in such an incertitude to deny, that it can be relevantly subsumed on any of the said acts of parliament.

2. Arguing and voting is no ways relevant to infer the conclusion of the ditty; because by divine law, law of nations, statutes and practices of this kingdom, *in deliberando*, a member of parliament or other council, should give advice or suffrage, according to his persuasion of the good or ill of the subject debated on, and under consideration; wherein if his reason cannot bring him up, nor his conscience admit him the length of others in such public councils, he ought to have charity for the one, and excuse for the other.

Like as by the 5th act, parl. 2. king Charles 1, it is expressly statute, That every member of parliament shall faithfully and freely speak, answer and express themselves upon all and every thing which is propounded, in so far as they think in their conscience may conduce to the glory of God, the peace of the church and state, and employ their best endeavours to promote the same. Under which oath, (read in the audience of the late king, and by him approved in the parliament, 1641) the defender, as a peer of that parliament, A. D. 1648, was solemnly tied to the dictates of his reason, and pre-



script of his conscience, and cannot be called in question as a member, having freedom there-in; and conform thereto is the oath of this present parliament, bearing, that every member shall faithfully and freely, according to their best judgment, give their advice and vote in parliament.

To the second part of the first member of the said article, anent the defender's protesting and dissenting from the said act, 1648; it is alledged for the defender, the protestation is not produced as it ought to be, whereby it will appear, that if any was, the same was before the act of parliament passed, and that they did only protest and enter their dissent against proceeding to the determination of the question then in hand, which evinces the same to have been before the act was made. Like as the defender offers himself to prove by the members of parliament then present, that being asked if they would renew the protestation after the act, they shunned to do the same, the act being now passed.

2. Absolutur, (though the same were produced) because it is offered to be proved, that the same was ratified in the fourth act, Parl. 2. Sess. 2. Char. 2, which was approved at the treaty at Breda, and confirmed at Perth and Sterling, as is said. But for the honourable parliament, their more full clearing, anent the defender's carriage in the said particular, it is offered to be proved, it need be, That the defender (before the Commissioners return from the said Isle of Wight, in the said year), when he heard that his majesty had satisfied his people's desires concerning religion, in presence of divers persons of honour, he expressed himself passionately earnest to engage for his majesty's freedom. Like as the only difference of the opinion anent the engagement was in the manner the grounds of those that were dissatisfied: being as they are expressed in the said protestation, viz. That the parliament should not proceed till the commission of the church were consulted; and adding also, (which is not therein expressed) till advertisement and three months warning were given, conform to the large treaty; until all means of peace had been first essayed, and while first the lawfulness and necessity of that war should be found by the parliament, conform to the 7th act thereof. And it is humbly conceived, that many in this present parliament do remember, how unanimous all were, that his majesty should be brought out of the hands of the sectaries, to some of his houses in or about London; And all they differed in was, that the church should be consulted anent the securing of religion; all means of peace should first have been essayed, and warning given in manner aforesaid, conform to the large treaty; the breach whereof was made one of the grounds of that declaration, Act 7. And it cannot be refuted, but that at several meetings, the dissenters debated the dangerousness of that war (especially if the army should be defeated), from the sad consequences that might thereupon ensue to the

king, kingdom and religion; as immediately thereafter fell out. Whereas had the nation been entire and whole in their power and force, that army of sectaries, in probability, would not have dared to have attempted those matters which afterwards they did. So that the case being truly stated, there will appear no malice against his majesty's person, authority, and restitution thereof; but an uncleanness to enter into a war of such danger and hazard, and the respect they had to the security of religion (as all then professed) according to the covenant.

To the second member of the ninth Article, whereby it is alledged, That in contempt of the authority of that parliament, and against the preservation of his majesty's person and authority, that the defender convoked an army of rebellious subjects, and therewith committed divers and sundry outrages, slaughters and vastations, upon the persons and estates of his majesty's subjects; invaded cities and castles, seized upon magazines, arms and ammunition, and called in an army of sectaries to his assistance:

It is answered, first, That the same is not relevantly subsumed upon any act of the proposition; at least till the Advocate condescend upon which act thereof the same is founded, the defender is not bound to make answer.

Secondly, The defender denies that he did convocate these forces, or gave counsel or command therefore: And as to his being with them, he must be assolved.

1. Because by a treaty at Sterling, betwixt the chief officers of the army then alive, and out of prison; and a Quorum of members of the Committee by authority of parliament, 1648; who had power to order the incident affairs of the nation, the said meeting, and all acts of hostility, and others thereby committed, are expressly discharged, *hinc inde*, and a mutual oblivion and indemnity therefore.

2. Any meeting he had with them, was by a call of those of the Committee of Estates, who joined with those forces, and who in the treaty is acknowledged the Committee of Estates.

3. The said meeting and acting thereof, together with the treaty and Articles thereof, is ratified and approved by the third act, 2. Parl. 2. Sess. Charles 2.

The third member of the ninth Article, bearing, That apprehending his power was not able to withstand his majesty's good subjects, the defender called in to his assistance the army of sectaries; and that he went into Mordington, and met with the commander of that army, had private consultations with him, and prevailed with him to come to Edinburgh with his army, whose coming he might have hindered; because Oliver said, That he could not help his lying upon the tenants of Mordington, for that his staying and going depended upon the defender; and that he did countenance and consult with the sectaries and their commanders, in Edinburgh, or the Canonage, in the house called the Lady Hume's lodging:

It is answered, That as to speeches and consultations in general, not relevant except they were contended on; and as to the words spoken by Cromwel, if spoken by him, it was a lye, and can infer nothing against the defender: and the occasion of his stay was till he got Berwick and Carlisle, which could not be restored till the treaty of Sterling was closed. And as to his meeting and treating with him, *absolvitur*, because he and others did the same by warrant of the Committee, and which treaty was ratified in the aforesaid act of parliament thereafter.

To the fourth member, That he concealed and voted to the drawing up of a letter, directed to Cromwel, wherein he and his complices engaged themselves, in the name of the kingdom of Scotland, to do their utmost endeavours, that none who had been necessary to the engagement, or in arms at Sterling, in pursuance thereof, should be employed in any place of trust, without the advice and consent of the parliament:

It is answered, 1. No such letter produced.

2. Though it were produced, yet consenting and voting not relevant; because a vote in the Committee of Estates can infer no crime against the defender, nor any member thereof, nor any act passed in the said Committee: especially seeing,

3. The acts of the said Committee were ratified in the fourth act of the parliament aforesaid; all ratified thereafter by the treaty at Breda, and acts of ratification at Perth and Sterling: and the necessity thereof would be also considered in respect of the large treaty, both kingdoms having given their public faith, that the breakers should be rendered up to the observers; and that the English army then upon the borders, required the performance thereof against the engagers, and for farther security, pledges and places of strength. It was at that time counted a great favour (considering their power to have made their own terms) when they might have imposed and forced what they pleased more, yet they did accept this act.

To the fifth member of this article, bearing, That he did draw up, at least did counsel the drawing of certain instructions, given to sir John Chiesly, purporting, That the noblemen, gentlemen of quality, and considerable officers, who went into England under duke Hamilton, and were there prisoners, should be kept as pledges for the peace of the kingdom:

It is answered, 1. Not produced as it ought to be, that it may thereby appear whether he subscribed the same or not.

2. Not relevant (one of the committee) except it were libelled present, and voted at that time; for *'noxa caput sequitur.'*

3. Not relevant, voted *'quia in senatu ut mo tenetur de consilio.'*

4. Oppones the authority of the committee, treaty, acts of parliament, and ratifications aforesaid.

To the last member of this article, bearing,

That he gave warrant under his hand for issuing of a proclamation against the families of the laird of Rea and Vyres:

It is alledged for the defender, \*1. No such warrant produced; if any such a warrant were produced under the defender's hand, it will certainly appear to be as president of some committee, and so not his personal deed; nor such a deed as can infer any crime against him.

2. No such proclamation ensued.

3. Although ensued, yet that took no effect, and so was *'minu tantum, et animus ad effectum non perductus.'*

4. Oppones the act of the committee, and act of parliament, 1649, aforesaid; which parliament, and the whole act thereof, is ratified in the treaty at Breda, and approved in the parliament at St. Johnston's and Sterling; wherein was also made an act of oblivion, oftentimes before alledged on: in respect whereof the defender ought to be absolved from the said ninth article, and whole member thereof, and all therein contained. And because the defender has in his defences so oft alledged the act of parliament, 1649, for his vindication, he desires that it may be observed (which is very observable) that by the printed treaty at Edinburgh and Sterling, September, 1648, it is agreed and appointed by those of the committee at Sterling, 1648, that a parliament should sit down before the 10th of January next; conform thereunto, they did convene and sit down the fourth of the month of January, as by the said treaty, and the first and third acts of the parliament doth appear: whereby it is clear, that the said parliament, 1649, was appointed to sit by the committee of the parliament, 1648, who had power by the last act of the said parliament, to convene the parliament before the first Thursday in March, 1650, if they thought fit: as also that session of the parliament, 1649, by the last act thereof continues the same to the first Thursday in March, 1650. At which day they convened in the next sessions, and therein ratified the act of parliament made in the former session; and which day was the dyet to which the parliament, 1648, continued the same, with power to the committee of estates to convene the same sooner, if they thought fit, as is said. Whence it is evident, that the said parliament, 1649, whether as appointed by the uncontroverted committee, 1648, at Sterling, in the first session, or as it is continued to the first Tuesday of March 1650, in the second session, (both conform to the last act of the parliament, 1648) must subsist and sway the said defender his just reason, to found his defences upon the acts thereof. It is also further considerable, as to the loyalty of that parliament, that therein the murder of his late majesty was declared against, his present majesty proclaimed and brought home, his subjects of this nation reconciled to him, and taken into favour, an army appointed to oppose his enemies, the crown set upon his head; and that session of Perth, wherein the whole preceding proceed-

ings were approved, was dignified by the presence of his royal person.

And to the tenth article; and that part thereof where it is libelled, That the defender, in anno 1649, not daring to oppose in public, or in a direct way, his majesty's home-coming, he procured the application made, to be clogged with such limitations and restrictions, as were most derogatory to monarchical government; as is alledged to be more fully expressed in the commission, instructions and addresses, which are repented as a part of the libel.

It is alledged for the defender, 1. Seeing the said commission, instructions and addresses are libelled on, and repeated as a part of the ditty; in all law and form of process, they ought to be produced with the libel, for the reason adduced in the defence, against the relevancy of the proposition of the ditty; and till which be produced, it cannot be consistent with the said limitations and restrictions, and how far they are derogatory to monarchical government, and therefore till then there can be no process.

2. It is not condescended nor cleared, on which of the acts libelled on in the proposition, this article and members thereof are subsumed; and therefore it is obscure and inept: and in that incertitude, the defender has just reason to deny, that it can be subsumed on any of the said acts, to infer the crime and pain libelled against the defender, none of the said statutes making any mention of treating or inferring any pain therefore. Likewise after ruptures and differences betwixt a king and his subjects, all lawyers and politicians do agree, that the best and safest way of removing the same, is by treaty; and that being concluded on, it is also their opinion, that the same are to be observed, at least so far as to exempt the subjects from punishment, to whom indemnity has been thereby promised. And in this, Grotius *de jure belli et pacis*, lib. 3. cap. 19, is most clear; and many others who write on that subject. And therefore the said treaty being concluded, and after ratified by his majesty and his parliament, the defender cannot be called in question for his accession thereto, nor the pain of treason thereupon inferred: For the said treaty and conditions thereof being accepted and agreed by his majesty's voluntary contract, cannot be like as a crime, far less so high a crime as treason, against the defender.

3. *Absolvitur* from that member of the said article; because not only after the said treaty did his majesty tacitly remit any crime, if any was, in the said treaty, by admitting the defender to places of trust, by receiving the crown from his hand at the coronation, and by admitting him to take the oath of allegiance, and to be a member of his majesty's privy-council; but also after the said treaty was ratified, there was an act of pardon and oblivion by his majesty and estates of parliament, oft-times before alledged, and is here repeated.

Though the above-written defences be relevant

in law, as to the said member; yet for the defender's further vindication, the honourable parliament would take notice; that all along the preceding articles, all the public actings, from the year of God 1640, to the year 1648, (wherein the generality and representatives, both civil and ecclesiastic in the kingdom, concurred) are charged upon the defender as his particular actings, or as if the defender had been the special author; whereas in this article anent the treating with, and bringing home of his majesty, therein it is known the defender, according to his bounden duty, was most active and zealous; and therein he wrestled with all his might, and by his pains and God's blessing thereon, overcame many difficulties, and did effectuate the same. The libeller does so far detract from the defender's faithful discharge of his duty in this so glorious action, and without libelling the least presumption of any circumstance to make the same probable; the defender is accused, as if he had in his judgment been against his majesty's home-coming; which because he durst not avow publicly, therefore he betook himself to underhand dealing, to clog the treaty with limitations and restrictions, excluding the defender from all accession to the said duty, in so far as it was good, viz. to bring home the king; and making him to be the sole author of all libelled to be evil therein, to wit, of the limitations and restrictions. Whereas the truth is, he was active in the king's home-bringing, and was passive in the other; having laboured what he could, that there should be as few conditions, and the same as satisfactory to his majesty as was possible at that time to obtain; which is known to all that did transact the said affair, and which, if need be, is offered to be proved.

And for further clearing hereof, if this article shall be further insisted on, my Lord Advocate will be pleased to condescend to declare who the parties were that made the motion for addresses to his majesty, of whom the defender should have been afraid, if he had been of a contrary judgment, to have opposed openly. For if the defender had so great sway in affairs, as till along the preceding articles he is allowed to have had; and also if he had intended, (as is broadly and with foul mouth alledged) in the said libel all along alledged, to have extirpated and evacuated the king's majesty's authority, government and posterity; and had such correspondence with those abominable regicides, as all are persuaded by the said libel to believe, in the said year of God, 1649; when the said traitors were strong, and both this land through divisions and otherwise, very low; and when the power was in the defender's and his complices hands, (as my Lord Advocate is pleased to libel and term them) who at that time had the managing of affairs; then was the fittest time and best opportunity, if they had any such disloyal thoughts, to have shaken off that government. But so far did they at that time such treachery, that they not only proclaimed his majesty, and according to their duty owned

his interest, even with the hazard of their lives and fortunes, there being none so shallow, but easily might have seen, that the discharge of the said duty would bring upon themselves and the nation the power of England, (the only power of arms and armies being at that time in the abominable regicides their hands) who did immediately thereafter invade this kingdom.

As to the other member of the tenth article, whereby it is libelled, that the defender, (to obstruct his majesty's purpose, yea in so far as in him lay, and to terrify him therefrom; by his and his complices cruelly executed upon the marquis of Montross, who as his majesty's commissioner did represent his majesty's person) caused to murder the said Marquis, in anno 1650, in manner, &c.

1. It is no way relevantly libelled, that the defender in general caused to murder him, except it were condescended, *quo modo* he caused; and if thereby he meant his voicing in parliament, 1649, in the said matter; *non relevat*, because a vote, act, or sentence of parliament, is no way relevant to infer a crime against any particular member therein, as hath been oft before alledged.

Likewise, 2. The sentence of the forfeiture of the life and estate of the said Marquis, was no decree of the parliament 1649, but of the parliament 1653, which was homologate by several other acts of parliament, excepting the said marquis among other excepted persons, as specially by and by the 22d act of the parliament 1648.

And yet, 3. The defender did not vote in the business of Montross, as he can prove, if need be, by the members there present 1649. And as to the aggravations of the said murder, the said marquis being his majesty's commissioner for the time; it is no way a relevant circumstance to aggravate the same, except it had been libelled, that the said commission had been shown to the parliament, which nobody can affirm; but on the contrary, the said parliament conceived they had just reason to presume that there could be no such commission for his coming against them at that time; because his majesty, after the murder of his royal father, very graciously had admitted their gracious applications to him.

Like as before, Montross's coming at that time to Scotland, and always thereafter, his majesty had a committee of the said parliament, under the name and title of the Committee of Estates of his majesty's kingdom of Scotland.

As to the defender, his alledged keeping correspondence with Cromwell in the year 1650, as the same is irrelevantly libelled, no deeds nor acts of correspondence being condescended on; so there was never any such thing. And there was one named Hamiton who vented this untruth, hanged at Sterling, and at his death did declare, that the same was a most unjust calumny; and it is not to be believed that at that time he would have charged

his soul with a lye; and in law, the words of a dying man are oraciously believed.

As to the act of the West Kirk, the defender (noways acknowledging the relevancy of the said article, as it is libelled) was so free from having the least accession to the said act or declaration; that so soon as he got knowledge thereof, to evidence his fidelity to his majesty, it is offered to be proved by witnesses (for their loyalty above all exception), that when the first news came, that the commissioners were about the drawing of the said act, the defender gave advice to his majesty, to draw a fair declaration, and to go such a length, as in freedom he could, that thereby he might prevent the said act, and obviate the pressing thereof. But as for the other that was pressed, he was altogether against the same, and dealt with the minister who came from the commissioners of the kirk, to forbear pressing his majesty therewith; which also, if need were, might be proved.

As to the eleventh article, and subsequent articles, because the same are for deeds of compliance after the usurpers had prevailed and were in possession; before the defender make particular answer, it is necessary to premise in general, that it being notoriously known to the world (to the eternal honour of this kingdom) as for that damnable usurpation of Oliver, not only we were not active in establishing the same, but according to our bound allegiance to our sovereign, were to the utmost possibility of our power in arms under his majesty; and otherways active against him, and in opposition thereto, many lost their estates, many their lives, and all of us our liberties: and when we could do no more, being oppressed by the force of the said usurper, (as a chaste forced virgin) we cried to God and man, attesting heaven and earth against usurpers, (even when their bloody swords were at our throats) he and his army, amongst many other execrable mischiefs, were also guilty of this usurpation. We have suffered, and been only passive under that irresistible force. And as thus was the condition of the kingdom, so specially the defender, who as he had been most active and instrumental in his majesty's home-buiging, (which was the only ground of the quarrel, and for which he was looked upon by them as one of their capital enemies) even so after it pleased God for our exercise and punishment, to suffer their power to prevail over all his majesty's forces and over this kingdom, such aversion had the defender, even so much as to live under their power; much less to comply actively with them; that after Worcester fight the defender offered to Mr. David Dick, if he could get his company, or the company of any other honest minister, that he would never capitulate with any Englishman, so long as he could subsist in any part of Scotland, either in his lands, or isles thereupon. It is humbly craved that Mr. David Dick may be examined. Neither did the defender ever capitulate with them, in August 1654; hav-

ing before that, endeavoured all that in him lay, to have persuaded those of Athol, Monteith, and others, his neighbours in the Highlands to have concurred with him, that they might have jointly made some probable force, for resisting the over-spreading power of the usurper; but all in vain. Likewise, long before that time, the whole forces and strength of the kingdom were surrendered, yea, the whole kingdom, by their deputies and representatives, who met at Dalkeith, with the commissioners of the parliament of England, so called, was forced to submit to their power, and accept the tender of the union of this nation with England, proffered by them. Neither did he at the said time, in August 1652, voluntarily come in, and capitulate with the said English; but was surprized, (several regiments of their forces, horse and foot, having suddenly come about his house, where he was for the time lying deadly sick,) as can be testified by Dr. Cunningham, who was with him for the time, and is humbly craved to be examined thereon. As also, notwithstanding the said surprisal, and the defender's condition, though they threatened, notwithstanding his sickness, to carry him away prisoner, yet all their threatening could not prevail with him, but he did absolutely refuse to subscribe the articles first offered, which contained the tender of the union, and an obligation upon his part to promote the same, and the government as then established, and to live peaceably; yea, such jealousy had they of the defender, that by his capitulation he was prisoner upon demand. Neither during all the time of their power over this kingdom, had he ever any favour of the said English, but was always looked upon by them with a most jealous eye. And for evidencing hereof, the defender humbly craves, that there be commission granted for examining of lieutenant-colonel Utter, (anent what was deponed by Macnachan, and several others) viz. of the defender's small affection to the English, or any other authority but the king's. Likewise, it is notorious, how unjustly he was persecuted before the Exchequer here for the time, for payment of 4000*l.* sterling, alledged to be due for by-gone feuduties. This being the defender's true case, it is hoped that the honourable court of parliament will take consideration how the defender stood out as long as he could, till he was prisoner; and will have a different consideration of subjects acting under the lawful magistrate in exercise of his authority by himself, or others lawfully constituted by him; and of the actions under cruel usurpation and tyranny, the lawful magistrate being forced, for his own safety, to abandon his dominions and people to the lust and oppression of the unjust usurper (who was master not only of their fortunes and persons, but their lives and all that was dear to them;) and had for a long time detained the possession of his unjust usurpation, and devalued the lawful magistrate. Which case is not only differenced by all who write on that subject, but also Coke in the third part of the

Institutes of the laws of England, cap. 10, anent treason, in expounding the statute of the 25 Ed. 3, upon the words of the statute le Roy, puts such a weight upon the king's being in possession, or one of the same, that he expressly affirms, the statute is to be understood of a king regnant, and in possession of the crown and kingdom; as also, that in such cases, a favourable consideration is to be had of the actions of a subject, who was particularly noticed, and jealously looked upon by the usurper, for his affection to the lawful magistrate and his government. All which being remitted to the commissioner his grace, and the honourable parliament their consideration, he now comes to answer to the eleventh article: against which eleventh article, and all the members thereof, as libelled, it is alledged, the said article is general, not condescending on the day or month, nor on the particular year of God, of the committing of the deeds therein libelled, but only alternative, in anno 1653, or 1654, and therefore (as has been oft before alledged) the same is inept, and there can be no process thereon. 2. It is not condescended on, nor cleared, which of the acts of parliament libelled on in the proposition, this article, and several members thereof, are subsumed; and therefore it is obscure and general, and in that incertitude the defender has reason to deny, that it can be subsumed on any of the said acts to infer the said crime and pain.

As to that which is first libelled in this article, That the defender did not rise in arms with the commissioner his grace, and the earl of Glencairn, who were commissioned by his majesty: the defender repeats the two exceptions aforesaid, against the whole article, being confident this cannot be subsumed on none of the acts libelled on. And further alledges, that it is not relevantly libelled, to infer (*vel minimam culpam*) against the defender, for less so high a crime, except it were libelled, that your lordship's commission had been shewed him, and he required, which was never done. And herein he may refer himself to the commissioner his grace's declaration; and if his grace does not remember, that the defender sent him word, shewing his desire to have met with his grace, and to have spoke with him about the business; but had never the honour to have his grace's answer or appointment.

2. For the further clearing, that his not joining, except he had been required, is no crime, it is evident from the fourth act of the first parliament Jac. 1. that those only are punishable, who do not assist the king's host, being requir'd thereto. And Craig, page 365, says, that because the king has so many vassals, they are not obliged, nor cannot be punished; except the particular pain to be inflicted upon the away-stayer, be particularly expressed in the edict, by which they are commanded to appear. And page 365, he says, that those who come not, being warned by an edict, shall be punished, and page 370, he says, that the vassals should not be obliged to appear at any

such services, except they be desired; which commands shall be proved by his peers. These edicts were particularly required by the fundamental law, and were called 'heri bona,' which is defined by Cujas, to be the calling and citation of the army, and is lib. 3. cap. 10. quart. leg. franc. to be the punishment of him who comes not to the king's post when he is called: and this assertion is clearly proved from Rague, in his treatise de Jur. Reg. pag. 53. Likewise by the said act of the first parliament of king James I. it is expressly ordained, that those who disobey to defend the king against notorious rebels shall be challenged:

1. If they be required by the king, as is said.

2. And except they have for themselves reasonable excuses. But sure it is, the defender not only was never required, as has been alledged, but there were even pregnant reasons, as he humbly conceives, the which seemed very probable at that time. Albeit it be the duty of all his majesty's subjects, to rise for his majesty's interest, in opposition to usurpers; yet it was not seasonable, as affairs then stood, till either they had been defeated by sea in the engagement, that they then had with Holland, (whereby both the forces might have been diverted, and the transportation of victuals and ammunition from England, Ireland, and the parts of Scotland under their command, and their army in Scotland, might have been intercluded;) or that Spain and France had concluded that peace, whereof there was then several reports: and thereupon his majesty's subjects in Scotland might have had hopes of some probable assistance in the undertakings in his majesty's service; or that division, and, in consequence, confusion, had fallen out in the English army among themselves; whereof there seemed to be but little hope, so long as the appearance for his majesty should meet them as against a common enemy, as it was. Likewise it would be thought it should have no other effect; and as in effect the event proved, that that army never divided till they had no common enemy, against whom mutual preservation doth necessitate a mutual concurrence, but all at amity one with another. And albeit a particular command had not been absolutely necessary, (if his majesty had been there in person) yet in a juncture of time, wherein such a war was improbable for many state reasons (which induces the defender to believe, that there was no commission granted at that time), which presumptions 'excusant à dolo,' and without dole (as has been said formerly) there can be no crime. And though he had been required, yet could not have been punished for his not obeying, seeing in effect he was the enemies prisoner upon demand.

But this is conceived only to be libelled as an aggravation of what followed, which is, That he joined in open hostility with the usurper's forces, especially with the colonels Overton and Twisleton, at the least Cobbet and Twisleton, at the least Twisleton, when he was

in the highlands, and in opposition to the said earls.

It is answered, 1. This member is general, not condescending upon the particular deeds of hostility, and therefore inept; for criminal libelling ought to be most clear, as is affirmed by Damhaud, cap. 30. prax. coron. num. 4. and should contain all the qualities of the crime alledged committed. And as to the alternative, that he joined with one or other of them, it is most lax and obscure, and therefore in that also this dittyes inept. And for the alternative added (at the least he gave counsel) *non relevat* (because general), except the counsel were condescended on, and that were such as might fall under the acts libelled on; and the most that can be alledged, if the time were condescended on of his alledged joining, is, that he was in company (it may be) with Twisleton; and if it was, he was only going along with him to general Monk (being sent for by him, and that when the earl of Glencairn was under treaty with him; if not after the treaty was concluded, which he conceives will not be denied), and the defender being their prisoner upon demand, by his capitulation with major-general Dean.

It is alledged first, that a prisoner should go in company (being commanded) with, and to those whose prisoners he is, is nothing like a crime.

2. Though that had not been, yet he alleges in answer to that member of the alternative, aent his furnishing of several pieces of great cannon to Alured, governor of Air, viz. That the defender and all that was his, or in his possession, being under the absolute power of the usurper, they might command him to go, or call him where they would, with whom to go along, or to bring whatever he had to them, had it been on his back, had been able to carry it: and that cannot be imputed to him for any crime (otherwise who should be innocent) when subdued; must they not give to their enemy of their goods, whatever he will have? and who in Scotland should be innocent: beloved not all to bring them; that is, in effect did they not take what they pleased? but as for voluntary going, or joining in action with Twisleton, or any of the others named in their service, the defender absolutely denies the same.

Item, For his taking and relieving prisoners, *non relevat*, except the prisoner was specially condescended on: specially relieving of prisoners is not relevant to infer any crime, but on the contrary is a good office to the persons and parties; except it is libelled that he, as an officer under the English service, took and relieved prisoners, which can never be made appear, whatever the same might import. But the truth is, the defender meddled with no such things; and the defender shall truly relate the point of fact which he conceives hereby to be meant, which is as follows: The defender hearing that his isle and county of Roisnath was pillaged, and going up the river Clyde, the boat wherein he was being followed by another boat: and the

defender having asked what they were? they alledged they did belong to the earl of Glencairn, but could shew no warrant; and thereupon the defender having some suspicion that they were rather robbers, than soldiers belonging to the earl; and fearing that general Monk, whom the defender was then going to, and whom he had never seen till that time, might get notice thereof, and make use of the same as a snare; the defender advised them to secure their money and arms in the hands of one of his servants, upon assurance that the same should be delivered to them, after he should be certified what they were; and thereafter recommend them (fearing to incur the danger of a private prison) to the garrison of Dumbarton, not under the notion of soldiers under the earl of Glencairn, but as common delinquents for injury done to the country. And at his return after a few days (being tender that they should incur no danger) procured their releasement, and their names were never enrolled as prisoners to be exchanged; and according to his promise, he caused to be re-delivered their money and arms.

As to the following member of that article, viz. That the defender took pay from the usurpers, for a company of Scots under them, and in their service.

Adhering to the several exceptions against the relevancy of the propositions of the dittay, and exceptions against this whole article, in the beginning of the answer thereto; specially that it is not condescended, under which of the acts libelled on this member is subsumed, till which be done, the defender has reason to deny that it falls under any of them. Neither is it relevantly libelled, to infer any crime, unless it had been libelled, that the defender, having commission for that pretended company for the English service at that time, had levied that company, or enrolled their names as a formed company, under the English and their regiments, and engaged them to the commonwealth and their service; because these are required in a soldier in any service.

1. That he be *relatus in numeros*, that is to say, enrolled, per lex eod. 42. Y. de Test. milit.

2. *Ut præstet sacramentum*, that is, that they gave the oath, ex milit. 11. F. eod. et Veget. 2. c. 6. or that the defender had employed them in the English military service, or in execution of their orders, all which the defender absolutely denies; they never having been enrolled, given any oath or engagement, or employed in their service, as is said.

But on the contrary, and the truth is, there used to be in the said shire, and all other places in the Highlands in broken times, watches to keep off depredations, masterful reifs, and other oppressions amongst the country people themselves and their neighbours in such times. And accordingly, in the year of God, 1653, or thereabout, the shire of Argyll not being able to entertain their watch, and pay cess also, (not being as yet well planted after the burning) general Monk was prevailed with, to help to entertain the said watch (like as at the same

time, also several other shires bordering upon the Highlands, as Inverness, Perthshire, Aberdeenshire, Sterling, Dumbarton, all of them had watches at the said times, and allowance therefore from general Monk), who within two months did withdraw the said allowance from the said watch of Argyllshire, because they refused to engage against those that were then in the hills, under the defender's son and others, whom the said general Monk also alledged they favoured; and thereupon withdrew his help and allowance for the said watch, and spake of the defender what his grace pleased.

And to evince that this was nothing but a watch, the men were not in a formed company, but several gentlemen in the shire had the ordering of several numbers of them at convenient and needful places of the shire, with proportionable entertainment, and without subordination as ordinary soldiers; all which is notorious, and, if need be, the defender offers to prove. And the duke of Albemarle is hoped will remember, how much offended he was, that the defender would not engage the said watch against the said lord Lorne and his parties; and what prejudice he did still entertain against the defender upon the said public account. As also colonel Robert Lilburn, when the lord Lorne and Kenmure went to Kentyre in the year 1653, the said Lilburn, immediately upon the notice thereof, having come with a considerable party of the English army to Dumbarton; and sent to the defender to meet him, and to go along with him in Argyll towards Kentyre; if the said colonel does not know and perfectly remember, that the defender shunned the meeting, and would not go; whereupon he returned back with the forces, after he was at the length of Lochlomond; whereupon the defender humbly craves that he may be urged to declare. As also that the countess of Balcarras may be examined, if the defender did not assist her and her husband, in their passage through Argyllshire, as they were going to a meeting at Finlary for the business in the hills, in the year 1653. Neither can it be alledged, that the defender or any of his people did the least prejudice to any person or party that professed to be for his majesty's service; albeit if he had been so disposed, he had, and might have had several opportunities to have done the same.

As for the member following, That the defender called the actings of his majesty's forces against the Usurper, rebellion:

It is most general, neither condescending on time nor place, and therefore irrelevant and inept; but when condescended on, he nothing doubts, but that it shall appear he spoke no such things, nor had he ever any such construction thereof.

As to the last deed in the said article, That the defender, A. D. 1654, took upon him power to bring off such as were in that service, and to give remissions therefore, and particularly to John Mackdowgall:

It is general, neither condescending on time nor person brought off, and therefore inept and

irrelevant. And if it be meant only of the person named, viz. John Mackdowgall of Dumolich; it will never be made out that he was in that service, when the Commissioner his grace and the earl of Glencairn were in the field; nor that there ever was a remission granted by the defender to him, or any other, in relation to that service.

As to the twelfth article and first member thereof, anent the defender's countenancing and assisting, by his personal presence, the tyrannical and treasonable Proclamation of Richard the Usurper and Protector of his majesty's dominions, at the Market-Cross of Edinburgh and Dumbarton:

The defender is so notoriously innocent of this member of the article, that he might with much confidence (in place of all other defence) simply deny it. But he will do no more for defence and clearing of his innocence, than where he is to propound his defence of *alibi*, that there month and day must be condescended on, whereof none is condescended on in this member of the article; and till this be condescended on, it is inept, and the defender ought to be assolized therefrom. But the days of the said Proclamation at Edinburgh and Dumbarton being condescended on; the defender offers him to prove, that during these days he was *alibi*, and neither at the city of Edinburgh nor Dumbarton all these days.

As to the second member, anent the defender's procuring himself elected a commissioner for the shire of Aberdeen; and accepting a Commission from them, to Richard's pretended parliament, and sitting and voting therein as a member of his pretended house of commons:

That the English Usurpation was one of the most horrid usurpations that ever has been in Europe, against all divine and human law, against the most uncontroverted right of the most illustrious of kings, our dread sovereign, and his most royal father of eternal, glorious memory, which none of common sense or honesty will controvert. Next, the said Usurpers having nothing but an unparalleled, unjust detention of that power, whereunto no manner of way they had the least right to, or any title whatsoever; but in place of a title, armed violence and force: the only mean, for title they had none, whereby they both *de facto* attained, and violently detained that possession unjustly, of that power whereof the only right was, and possession ought to have been our dread sovereign's: Whosoever by arms, counsel, or otherways, aided or abetted that armed force, in establishing *de facto*, of the power in the persons of the monsters of men, and so in setting up of that abominable usurpation; that he is guilty of the highest treason, is heartily acknowledged. But the Usurpers having treasonably thrust their and our sovereign, his majesty, from all possession of his just right, and having taken upon them the supreme power; and being possessed, though most unjustly, yet most peaceably therein, and keeping the same by force, as they had taken it; the case then became

most singular, as to what the poor oppressed subjects under their force might do, *hoc rerum statu posito*, in this state of affairs, wherein the Usurper had treasonably put them. Lucklama, a most acute Juris Consult. Ecclæg. 6, membran. in l. 3, de Officiis prætorum, observes, learnedly, that 'Distinctio fieri debet inter personam ejus qui magistratum gerit (cum tamen jus ad magistratum non habeat) et ipsam magistratum quem gesserit; persona enim ejus est privata, hic publicus; et in publicis non tanta personæ quam utilitatis hic publicæ habenda est ratio, ut enim tutela,' ait Cicero, p. 1. Offic. 'Sic procurato reipub. ad utilitatem eorum qui commissi sunt, non ad eorum quibus commissa gerenda est, et sapientes desinunt nihil aliud esse imperium nisi curam rei alienæ,' ut ait Ammianus Marcellinus lib. 29, that is, *ipsius reipub.* So Lucklama distinguishes between the person of him who unjustly *de facto* attains the magistracy (whose person is still but in effect private, and in the case of usurpation, a traitor), and the magistracy which he carries, which is public.

Likewise, it should be distinguished betwixt acts concurring with the usurper, transferring *de facto* in his person the power he usurps, (which are treasonable against the lawful sovereign) and acts, whereby the oppressed subjects make use of the power now usurped; wherein the utility, not of the usurper, but of the subjects, is respected; as Lucklama observes, *ubi sup.* And then Grotius, lib. 1. de Jure belli et pacis, cap. 4, num. 15, speaking, 'de invasore imperii,' of an unjust invader, while his possession remains unjust, says, the act of power is binding for the good of the commonwealth; and because it is probable the lawful governor's will is, rather the usurper's command should be obeyed, or take effect, than that laws and judgments should fall in confusion in their terms; 'Restat ut de invasore imperii videamus nunc postquam longa possessione vel pacto jus nactus est, sed quamdiu durat in justæ possidendæ causa, et quidem dum possidet actus imperii quos exercet vini habere possunt obligandi, non ex ipsius jure, quod nullum sed ex eo quod omnino probabile sit, eum qui jure imperandi habet sive est Populus ipse, sive rex, sive Senatus, se malle interim rata esse quæ imperat quam legibus sub tali summam induci confusionem.' And Lessius, who is one of the authors Grotius cites upon the place, says, in the place cited, viz. Lib. 2, de Justitia et Jure, cap. 29, dub. 9, F. 37. That 'tyranni usurpatione potestatis mandatis obtemperandum propter bonum commune;' which is, that the tyrant and usurper is to be obeyed, even from the law of nature, for the public good, in such a state of affairs; and adds 'alioque omnia essent plena latrocinii et furtis;' that is, that all would be full of robberies, thefts and confusion, in that state of affairs, because of the usurper's force the use of no other government can be had. So that the necessity of the benefit of government for the good of the subjects or common-wealth, espe-



cially in what relates *ad reipublicæ statum*, in things necessary for the standing of the commonwealth, or to evite the ruin thereof; and the interpretative and presumed consent thereupon of the prince, who has the right to the authority which the usurper has usurped, but is excluded by the usurper from benefiting the subjects by it himself for the time, are two grounds whereupon the making use of the power now in the hands of the usurper is founded, as is said. Whereupon it is subsumed, that in our case the invader and usurper Oliver having violently taken upon him the power, after he had put his and our sovereign from the possession thereof, oppressed by his armed force this nation, and amongst others the defender; and Oliver having kept the possession all his time, and Richard continuing same, the benefit of that power, which now he had usurped, and whereof he was in possession, was, as always it is, so necessary for the standing of the commonwealth, that without it men become but as fish in the sea, the lesser a prey to the oppression of the great: but especially, the said Richard having called a pretended parliament, and commanded the shires to send commissioners thereto. Meetings and representatives of the nation, as they are of great use at any time, for treating common affairs of common consent, so transcendently at that time, for moderating the arbitrary tyranny of a usurper; and that not being able to expugn his force, they might by strength of common-counsel overcome and persuaide his reason to things absolutely necessary for the subsistence, at least for the preventing the ruin of the whole body of the kingdom, and of his majesty's lieges therein: as was the stopping that miserable union, which the defender knew that it would be, as it had been before, at even other parliaments, so, at that, strongly attempted, as indeed thereafter it was. Which union was that vortex wherein our religion, our ancient government, monarchic in his majesty's person and family, and the interest of the nobility and our liberties were wholly swallowed up; and under pretext of being united, we were really enslaved to that pretended commonwealth. The easing, if they could not persuade him to the taking off of the maintenance and cess, (which upon Scotland was sixtuple more than the proportion of England, and in itself so heavy, with the excise and other public burthens laid by the usurper on it, that more was exacted in one month, than his Majesty's royal predecessors would have imposed or taken of taxation for an age, so that the country could not subsist under it;) as also taking off some of the forces under which we were kept in bondage, if that at least could have been obtained: The prevention of the alteration and change of our whole laws, which was vehemently threatened, yea, and in general the confounding, and *adulo optimo*, circumventing and defeating of the counsels by which the event proved, it was more hopeful and easy to overcome that force, than by might or power. And as the liberty of the

election of the members in England, at the time of Richard's parliament, made it serviceable to his Majesty in it, and hopeful to all his Majesty's friends and loyal subjects, so was it no small encouragement to the defender to go there for the same end: And at the meeting in the committee of Scots affairs, and several other meetings, when they were upon the debate of the said union, the defender, on purpose to stop the same, did propose that there could be no union, except it were agreed, that we might enjoy our religion in Scotland without alteration, as it was established by our own laws: and that we might be ruled and judged according to the same laws, and except our cess were proportioned according to theirs in England. All which concerns the defender knew would never be granted, and were indeed so utterly improbable at that time, that the proposition thereof was construed for no other end, than for the end aforesaid, to stop the said union: likewise it did so well succeed as in effect it did obstruct it, as the several persons of quality that were present can, and, if need be, will declare. And at that meeting, the actings and usurpation of the Usurper Oliver, and the oppressions of that army were of purpose much called in question to make that government and them odious, which accordingly happily followed; and such a breach and confusion amongst them was made, that their affairs thereafter could never come in any consistency, which made considerably and evidently a way to his Majesty's happy and glorious restauration. To all which joining, that the call and command of the armed force has *parentis necessitatem*, a necessity of obeying lying upon persons under their power; it will follow from what is alledged out of these above-cited authors, founded strongly on reason, the defender in that state of affairs had necessity and some obligation to go and essay what could be done by counsel, wisdom and prudence, since now there was no strength nor might left, effectuate for the standing; at least, to evite the ruin of the country, in the particulars above-mentioned, and others of that nature: at least the defender, as all of us, was under their force; and for eviting of his own and the country's ruin, *habuit parentis necessitatem*: and by consequence there was no design of treason therein, but by the contrary most loyal intentions, upon good ground of hope, and very probable appearance. And therefore it is hoped the commissioner's grace and estates of parliament will not find this member relevant to infer so high a crime against the defender; *loc maxime attento*, that beside public ends, it was even a necessary self-preservative act; for the defender had several other things of personal interest; as that they had ordained him to pay to them about 4000*l.* sterling, for alledged new duties, and in time coming so much, that both joined, he was not able to bear, and if need be, it is offered to be proved, and that he was most rigorously persecuted for the same; not only threatening to use real

execution against his estate, but also to imprison his person.

For evitiug whereof, he was behoved to go at that time to London, and could not have his person secured from arrestments there, but by going in commission : and it is known that his majesty is so gracious, as in not a few, to excuse what they did of that nature, to evite though but their own personal ruin, not imputing it to unfaithfulness in them at such a time ; according to whose glorious and imitable example, it is with much confidence hoped, that the commissioner's grace, and honourable estates of parliament, will have a favourable construction of what the defender did in that particular, being necessitated thereto both for public and private interest ; without any deceit or fraud, either in the intention or event, there being nothing at that time, while the defender was there, done, for confirming the usurpation, or excluding his majesty's interest.

Likewise it may appear, that it was only the concurrence both of public and private interests and necessities aforesaid, that moved the defender to go at that time ; because, though he was desired oft-times before to go, yet he still refused till then : he was one of the last that went to that, being the very last pretended parliament under their power ; not till long after that commissioners had gone for the nation for several years, and that all had submitted to their constitutions, and were of necessity made use of as laws for the time.

As for the aggravations of this member, and to the first, that because of the defendant's nobility, he was incapable to have been elected, at least might have refused :

It is answered, that it is notorious, nobility was not then respected at all, nor was any ground of excuse, the meetings to the elections being commanded to all, as heretofore (and so noblemen and others heretofore met promiscuously through all the nation) as is notoriously to all known.

And whereas it is libelled, that he had not his residence within the shire ; it ought to be repelled as irrelevant, because it is true, and was known to the usurpers, and their ministers and underlings, that he had land within the said shire, and that considerable. So that he could not decline the said employment without prejudice, the will and list of the usurper at that time being uncontrollable, and tied to no rules of law or justice.

And whereas it is inferred, that sitting and voting in that pretended parliament, he acknowledged his majesty's power and interest to be in the usurper's person : it is answered,

1. He acknowledged the same no otherwise but as the kingdom did, to wit, *de facto*, for *de facto* the usurper had taken or possessed himself of the power ; as his majesty pleased to speak of it in his proclamation ancient commerce with Portugal, in October last, and had obtained the same for a long time : but neither the defender, nor any other loyal subject, ever did, or will acknowledge, that *de jure* the same

belonged to him, or that he had any just right or lawful title thereto : as also Lessius says in the above-written place, speaking of them that seek from usurpers that use of government ; whereunto, he says, they are holden in and obliged, once taking on them, the government, (though sinfully and unlawfully) they seek the benefit of it, says he, not absolutely, but under a tacit condition, viz. if the usurpers will take upon them the government : 'Petuanti' says he, 'sub tacita quadam conditione, si velit, se pro principe gerere,' speaking of the usurper. And that the usurper would not give the use of the power he had taken upon him, but in the way he pleased, was his crime, which he continued during his usurpation. In respect of all which, it is humbly craved, that the defender may be absolved from the crime of treason, libelled thereupon.

Like as for the defender's further clearing in this particular, it is humbly desired, that certain ministers and others above exception whom the defender shall condescend on, may be examined, if after his return from England, in anno 1658, he did not express with great joy his hopes, that business in England did tend toward his majesty's advantage.

Item, That a commission be directed for examining sir Anthony Ashley Cowper, and several other Englishmen above all exception ; how the defender expressed himself in private anent his disaffection to that usurpation, during his being there the time of the said parliament, even though to his very great hazard at that time.

Item, That certain persons, upon whose names also he shall condescend, may be examined, if the defender to their certain knowledge, at the time of sir George Booth's rising (which fell but immediately after the defender's return from the said parliament) did not put himself out of the way, being informed that he was to be secured, and thereupon delayed his journey to Caithness, and so be the reader to have laid hold of any opportunity that should have offered for his majesty's service and restitution ; that time being the most probable that ever offered after Worcester fight.

As for the precept of twelve thousand pound sterling, which is alledged the defender got from the usurpers ;

It is answered, the defender did indeed obtain a precept, but not as a reward of any service (which he never did, nor desired to deserve from them), but for what they had wrongfully intromitted with, of the half of the excise of wine and strong waters, whereunto the defender had right by act of parliament, before they had any power in Scotland.

And as to the thirteenth article, first, for the whole article, it is not consented on what act of parliament the same, consisting of three different members, is subsumed ; and till it be condescended on, there can be no process thereupon.

And as to the first member thereof, anent the words alledged spoken at Innerary :

1. No time is condescended on, and therefore the libel in that part is inept for the reasons afore-mentioned, for which a criminal dittay ought to be special in the time, at least year and month.

2. Whereas it is libelled, he rebuked the ministers for praying for the king, in the words libelled, or some such like words; *non relevat* as to the ministers, except the persons were condescended on, whom he rebuked.

3. *Non relevat*, some such-like words; some such-like being most general, except the words were particularly libelled, alledged to be such-like whereby the defender might advise his offences, and alledge why they were not such-like, as he would, if any words ever he spoke were condescended on; for the truth is, he never spoke any such words; and was so far from rebuking any for praying for the king's majesty, that after the defeat at Worcester (which is the general time libelled, wherein he should have rebuked the ministers for praying for the king), he himself caused continual praying for his majesty both in his parish-church and family, yea even in presence and audience of the English when they came there, thought it was to his great hazard so to do.

As to the second member anent the words libelled and alledged to have been spoken by the defender at London, that he wondered how the people should be so mad as to call home a family whom God had rejected, and would never restore; or some such-like words:

First, this is also general; neither time, that is, year nor month, nor particular place, condescended on.

Secondly, It is libelled, that it was in the presence of persons of quality, they ought to be condescended on.

Thirdly, In so far as it is libelled the defender said, the people were mad to call home his majesty; it is general and inept, not condescending what people, and what was the occasion; if there was any motion made of calling home the king, whereupon that should have been spoken, and among whom it was. And Damhaud, cap. 30, *prax. com. num. 4*, and others, say, a criminal dittay should be most clear, and contain 'omnes criminis patrati qualitates,' lib. 30, *F. de accus. and Bart.* And others, *ibid.* That it should contain all the qualities of crimes alledged to be committed.

Fourthly, some such-like words *non relevat*, except the words were specially condescended on: which if they were, the defender would alledge and evince they were no-wise such-like: for the truth is, he never spake any such words, but on the contrary did all that he could there to make way for his majesty's happy restoration; as has been at length cleared before.

And was a very suspected person, in so far as in the year one thousand six hundred fifty-seven, Oliver was so jealous of the defender, that he commanded him to stay at London, and not to return to Scotland, till his affairs, as he was pleased to express, were settled. So

that not without great difficulty, by the mediation of the lord Broughil and Charles Fleetwood, he obtained his liberty: Whereupon the defender desires the said Charles Fleetwood may be examined, which he also desired at London. And not only was suspected, as odious to the English for his known affection thereunto, as is notorious, and has also before been expressed.

As to the third member of the said article, anent the alledged speech in Mastertonne's;

1. Neither the year nor month condescended on, and therefore general as to the time, and inept. 2. As to the first member thereof, that he would own any thing he had done;

First, it is exceedingly general, and not relevant; except what were the things he had owned were specially condescended, and what time, year and month: it is an unparalleled generality, and therefore till made special, no process thereupon.

Secondly, It can import nothing in common sense, wherein to own a thing is to acknowledge it for a man's own; but what he had acknowledged to be his own, whether word or deed, he would yet acknowledge; which is an expression of ingenuity, and no crime; And this being the received sense of owning, the word cannot be strained to any other sense; or if occasion should be taken so to do: and that another sense could be put on that expression, yet being 'more interpretatio capiendi est,' the most usual interpretation is to be taken, *Perd. ex qua: S. L. 1. F. de reg. juris*, as being both justest and safest by that law. And in ambiguous speeches, or such as may receive two senses, every man is the best expounder of his own mind, and his interpretation ought to be admitted, *per leg. in ambiguis F. de reg. juris*, and other lays. But the sense aforesaid is so plain, that there is no place for caption.

As to what follows in the said member, That if what he had owned or done were to do he would do it again, albeit he had known that all that has been would have come.

1. As to what is alledged against the first part of this member, That this is exceedingly general as to the time and month he should have spoken it on.

2. As to what the things are that he would do if they were to be done, and that time the things were done, or owned to be done, or that the saying that he would do if they were to do, is a crime.

3. What were those things in particular that are understood, or may be subsumed under the general of all things that have come to pass; whereupon it may be inferred, that that were a crime for the defender to have said, that notwithstanding of them he would do what he had done, if that were to do; and therefore the libel in this part of the member is also general, obscure and inept. And to evince the ineptitude of this generality, suppose the defender were thus indicted; You are indicted for all that you have done the times by-gone, preceding your being in James Mastertonne's house,

after your coming for London; were not that dittay without all controversy irrelevant? Then is it not also irrelevant to be indicted for owning in general that he had owned, or saying in general, that he would do that he had owned during that time, if that were to do again, without any farther particular condescendence?

Like as, 4. There is a very clear, obvious and benign sense these words may have, (if ever he spake, as he truly never remembers that he spoke any such words) that if it had been possible that times could have returned, and actions to be done under the same circumstances and representations they had then, it is probable these same might be the defender's actions again, though he had known what had come thereafter, not having connexion with, or necessary dependance on these actions, each does not so much as import his present thoughts or approbation thereof, but is very consistent with a present disapprobation of the same. And is it not ordinary to say, that if such times were as have been, or such moves, or circumstances of actions as have been, that it is very like I would be engaged in them as well as others, or as I have been myself; and yet to say with great consistence I ought not so to do, like as truly it is known, and it need be is offered to be proved, that the defender, on the just contrary, had said to one of Cromwell's counsellors, and to many other famous gentlemen, that things had been done wherein he would have been very far from engaging in, if he had seen what followed, which was the product of the corruption of evil men, that had abused what was well intended, for accomplishing of their wicked ends, and (till they brake forth and could not be resisted) unknown designs. And the defender hopes the sense aforesaid is very clear, and even though it were not so obvious, yet, '*rapienda est occasio quæ benignum præbet responsum*,' L. Rapiend. 163, F. de reg. juris: That is, any occasion should be even taken, as it were, though there were some violence done to the words for a benign interpretation; and therefore by all means that interpretation of the words that may seem to infer a crime ought to be chosen. Or if the word might be drawn to any other sense, yet '*in dubiis benigniora præferenda sunt*,' as has been said, in speeches dubious, the most benign sense is to be preferred, pret. semp. 36, F. de reg. juris; or where words are obscure, or may suffer two senses, the party's own interpretation is to be taken as the best interpreter of his own mind; Per ea quæ ss. 1. F. de reg. juris. And '*odia sunt restringenda, favores ampliandi*,' what is odious, (as that which may infer a crime against any) should be restricted, and favour amplified; and in general, the judge is always to be more inclined to absolve than condemn, and so consequently take the sense that may absolve, rather than that which may condemn, Leg. Corianus F. de oblig. et 47, act.

5. The Doctors say, that '*voluntas et propositum delinquentis distinguunt facinoræ per*

'*légem expressam*,' leg. qui in jur. 55. 'F. de furtis in præ. that is, the will and purpose of him that commits a crime, distinguisheth it; but '*velleitas*,' or '*voluntas inflexibilis*,' as it is called, not a will, but a would, is no purpose to do, and can be the cause of no crime; especially being about things past, and qualified with an impossible condition, if things already done were to do, which is altogether impossible, that a deed done can return to have a new being, and so to be done. And even therein some presumption of that mistake may be in this, from the place libelled, in which it is alledged to have been spoken, it being such as it is not improbable, that men may be very apt to fail both in judgment and memory, and so both wrong themselves and misconstrue others. And as for the aggravations that follow, that by speaking these words the defender took upon him by outward success, to give judgment upon the secret counsel of the Almighty: 1. As it is in no wise true that the defender spoke any of the words libelled; so this does, as he humbly conceives, in no wise follow upon the words immediately going before, alledged spoken in Mastertonne's, viz. that the defender owned what he had done, or would do the same if it were to do again; for that is not any judgment given of any hidden counsels of the Lord's, but an expression at most of his own actions. And as for the words before these, albeit he had been so presumptuous as to say them, as he blesses the Lord he never was, yet it is not libelled, that any thing that is therein alledged to have been spoken, either at Innerary or London, was spoken, or inferred from Providence and success. For the defender blesses the Lord, he has been otherwise taught than to use, or rather to abuse so Turkish an argument, and which the Lord has by his majesty's happy restoration so signally refuted.

And as to the last aggravation that the defender thereby hardened others such as otherwise were not ill disposed, in their wicked courses towards his majesty; it is indeed a sad reflection upon others herein not called. However. 1. It is so general, both as to these others and their courses, that it cannot, and the defender hopes it shall have no weight; especially considering that, 2. The defender opposes his defences before alledged, against all the members of this Article; whereby it is clear, that as they are libelled, they can infer no such thing in respect of all which the defender ought to be, as inferred also from this Article of the dittay.

As to the last Article, 1. It is not condescended under which of the acts of parliament libelled on, it is subsumed; and till then, it is ineptly libelled, and there can be no process thereupon. Moreover, the defender has the testimony of his own conscience, yea, and of an higher, that nothing libelled therein is true. Albeit if he had said, that the usurper's hazard was great from his majesty, and if his majesty's designs took effect they were ruined, the same were notorious truths, and it ought to have been so; that is, it ought to be, and it was good,

they were in hazard from his majesty's designs; and it was most just that his majesty's designs should take effect to their ruin. And what crime could be in so saying, he cannot apprehend; however, he never spoke any such words to Cromwell or Ireton, which Ireton he never saw with his eyes; and did far more abhor the least thought of giving counsel to challenge, or question his late majesty upon his precious life; and his innocency shall rest confident, absolutely to deny the same.

And as to the last part of this Article, whereby it is libelled, that an anno 1649, in face of the parliament then sitting, he told, that the usurper Cromwell had told him, that England and Scotland would never be at peace till the king were put to death; the defender adheres, as to this part, to the general exception against all this Article.

That it is not condescended under which of the acts of parliament libelled on it is subsumed, till which be done, there can be no process; and if it be intended that it be subsumed under the 43d Act, 2 Parl. Jam. 1, and the 134th Act, Parl. 1, and 10th Act and 10th Parl. and 205th Act, 14th Parl. K. Jam. 6, all these acts, as both by their titles and tenours, and by Skeine in his index on the words leasing-makers, appears; and it seems by their conjunction in this libel, they are understood also therein of lying and slandering his majesty and his progenitors: and the words libelled, though very horrid, yet seem to be of another nature. And 2. To that Act 205, Parl. 14 Jam. 6, whereon only any thing can be subsumed against him for concealing and not apprehending; 1. It is general as to the time when Cromwell should have told it to him, and therefore inept till the time be condescended on, which must be; especially seeing, if it be not condescended on to have been after the engagement was broken, nothing can be subsumed on the said act thereupon against the defender, nor on his not apprehending him; for he was not holden thereto by that act expressly, except (according to law) it had been in his power. But so it is, it is known, that at that time it was not in the power of the whole kingdom to apprehend him, whether his victory or strength be considered, or the kingdom's low and weak condition at that time, wherein they lay open to ruin by him, if the Lord had not restrained him more than their power could effectuate. And as to the concealing and not revealing, the defender ought to be absolved; because by the express words of the act, that revealing is declared to be such a revealing to some of his majesty's privy-council, or some under-officer, &c. as that there-through the authors of slanderous speeches may be called, tried, and punished: But that cannot be subsumed, except it were subsumed that the speeches were spoken before witness; otherwise could not have been proved, and without probation could not have been so urged, as that sentence could have been given thereupon, and the author punished according to the words of the act, which is also according to common law,

and which is hereafter cleared. Like as if the words thereafter should have been found treasonable, and the defender not been found able to have proved them, he should have brought himself under the crime of treason, for accusing another of treason, and not being able to prove it, and therefore could not be holden so to do. As also, albeit the defender had heard any such words as is libelled, (which he altogether denies) and that before witness, yet through his revealing thereof, the author could not be tried or punished; for it is notoriously known, it was above the power of the kingdoms at that time, as is said, or for many years thereafter, to punish him; and therefore the defender's not revealing cannot be subsumed upon the said act of parliament, to infer the pain contained therein, or related unto.

Lastly, the pains of the said act, and other acts before-mentioned together therewith, is not the pain of treason, as has been oft before evinced; and therefore the defender cannot be convened for treason, or the pain thereof, upon the said acts, but ought to be absolved therefrom.

But if this member of this article be intended to be subsumed under the last part of the proposition of the Dittay, whereby it is alledged, that by common law and practice of this kingdom, all concealers and not revealers of any malicious purpose of putting violent hands on the sacred person of his majesty, or purposing of killing and putting him to death, are guilty of treason; the defender protesting his innocence in never concealing any such purpose, nor the words aforesaid libelled, which he abhors, he is so far from justifying thereof, judging the horrid murder of his majesty to have been the very ruin of our peace and happiness: Yet as to the relevancy of that part of the proposition, in so far as is founded upon common law and practice only, the defender, because of the preparative, repeats what was before alledged in the answer to the proposition, in that part thereof: And adds further, 'In crimine læsæ majestatis,' in the crime of lese majesty. 'Num sciens tractatum proditoris contra principem vel patriam, et illum non relevans, sit puniendus poena mortis;' that is, whether he that knows a treaty about treason against his prince and country, be punishable by death. Clarus, l. 5. S. sus. pract. crim. quest. 57, says, that many hold he is punishable by death: And that Cogroz, in lib. Culpa caret F. de reg. juris num. 2. that it is the common opinion, citing Alciat, in lib. tacere F. de verb. sig. & m. l. bona fide num. 20. F. de poss. et in lib. 4. of Cato tum. 30. F. de verb. oblig. related also by Giga, de crimine læsæ majestatis fol. 180 num. 40. Roll. Cou. 88. num. 10. lib. 2. Carel, prac. crim. fol. 253. num. 29, saith, that all others follow this opinion. And Baldus cries out in one certain counsel, that because Bartol held otherwise, therefore his soul for that, as a crime, is tormented in hell. Where it is clear, that even by Clarus's acknowledgment, which is very high treason, is

not treason, by the common opinion of the doctors, according as is asserted by the famous authors he cites, and whom he contradicts not therein. 2. And Clarus nothing contradicting, but this is the common opinion, albeit he be of another mind with Bartol, that it is capital to conceal, and not reveal, yet it is only in two cases; to wit, 'In tractatu qui fiat contra ejus personam vel statum;' that is, where he has been conscious to, and known any treaty or consultation against the prince's estate or person. But as for other causes, he holds expressly, that the concealer, and not revealer, is not punishable by death, in these words; 'In aliis autem casibus et si sint comprehensi in crimine læsæ majestatis non putaren esse puniendum pœna mortis subditum qui non revelavit.' And that he counsels princes even in these cases, to use clemency and humanity, rather than severity; and to excuse their subjects upon any probable cause, from the pain of death. Whence, 3. It is alledged, even according to Clarus's opinion, concealing not relevant to infer the pain of death; except where the concealer has been conscious to, and heard some treaty, that is, deliberate consultation against the prince or his estate. But so it is, the words libelled, especially what is alledged to have been heard in parliament, 1649, seems not to import that, being, as would appear, but 'voluntaria verba;' if any such thing had been heard, which the defender absolutely denies; and imputing indeed the author Cromwell's thought or opinion, that there would be troubles still so long as his majesty (horrendum dictum) were not put to death. But Clarus, lib. 3. prax. crim. F. lin. num. 37. distinguishing betwixt 'cogitationem nudam,' a naked thought, and 'tractatum,' a treaty or consulting; he affirms that a naked or sole thought is not punishable in any crime, no, not in lese-majesty, except only heresy, when guilt is perfected in the mind. And thereafter, num. 2. he moves the question, 'Sed pœne quis non steterit in meris terminis cogitationis, sed ulterius etiam processerit ad tractatum cum aliquo de ipso maledicio committendo.' But, says he, put the case that any has not contained himself within the bounds of a thought, but has proceeded further to treat with any for committing the crime, &c. thereby making a clear difference betwixt a clear, sole thought, and a treaty about committing the crime. Now the words, as they are libelled, do not import any treaty with any for committing that horrid murder; but the signification only of Cromwell's damnable thought, what might be the consequence of not taking the life of our dread sovereign.

And hence, 3. It will follow, that these words cannot be subsumed relevantly, under that part of the proposition of the libel; because that any sense these words seemed to have, as they are libelled, would appear only to import this naked thought of what might be the consequence of taking the life of our then dread sovereign, but no purpose of his to take

the same. Neither could any presume, albeit his thought anent that consequence had been true, (as it is most contrary to the truth) that yet any man, in whom there had been the least sparkle of common reason, or conscience, would have purposed to commit, or committed one of the highest evils of sin, to evade though very great evils of punishment; it being a received rule amongst men, at least amongst Christian men, that the least of the evils of sin should not be committed, to evade the greatest of the evils of punishment.

A. Gomez, a most excellent lawyer, is clear in his third 'tom. variar. resolv. de crimine læsæ majestatis, num. 8.' that concealing even of treason, is only then punishable, when the concealer might prove it otherwise, not 'per text. leg. nostris, in fine cap. de crim. l. 1. et l. 2. quæ accus. capite, cap. de hereticis' whereby it is said, that whosoever is accused to accuse, should have his proofs ready, and who accuseth falsely shall be punished as the party accused would be, if the accusation were proved. Gomez citeth the canon law, in l. Hippolitus, and others for their exception, which *à fortiori* holds in our law, whereby the 49th act parl. 11. Jam. 6. accusing any of treason, not being able to prove, so that the party accused be acquit, being so far improbate by our law, that it is declared, that thereby the accuser shall incur the same crime of treason whereof he accused the other; is a sufficient warrant to the defender not to have revealed that of Cromwell, if there had been any such speech, as the defender never heard any such, except he had witness to have proved it, which neither is libelled, nor can be alledged, and therefore he ought also to be absolved therefrom.

5. All these laws anent concealing and not revealing, (as the defender humbly conceives) must be understood where the treason is privately plotted, and the execution thereof is carried on by secret conveyance, and which by revealing might be crushed and prevented. But it is notorious that the usurper, as he had the power of armed force, so he had the unparalleled boldness to carry on his execrable treason most openly; and that his power was such, as it was impossible for his majesty's poor subjects of this kingdom to resist (nor yet his majesty's other kingdoms, though far more powerful, and that many thousands of them from their souls abhorred the said act) or prevent and impede the same. And if the defender had heard any such words of the usurper (as he has just reason to deny he ever heard), whatever they should import; what probable reason might have been for not revealing it at that time, from the prevalency and power of that enemy, the condition of our poor country, and utter impossibility to bring him to punishment, beside the want of probation: and so what place there were to Clarus's counsel of humanity, the defender leaves to the commissioner's grace, and the honourable estates of parliament to judge.

6. Whatever relevancy there were in the

defender's concealing, yet his acknowledgment thereof in parliament, 1649, as libelled *non relevat*, to infer, or prove it. 1. Because a confession that prejudgeth a party must be prejudicial, that is, '*In judicio, idque utroque jure et civili et canonico*,' as says Panormitan. C. ex parte decret. de confess. num. 16, that it must be in judgment in a process, wherein he who confesseth is convened, as is clear by Leg. 6. F. de confess. where the words are, '*Si dum quis convenitur, confiteatur*,' that is, If any be convened, confess, &c. and Panormitan. dicto loco saith, That to the end a confession may prejudice him, who confesseth, it must be among other requisites, '*super re litigiosa*,' that is, on any thing litigious, or any thing in dependence or process, per L. in confessionibus, F. de Interrog. ait; the words are, '*Confessi- onibus falsis respondentes, ita obligantur, si ejus nomine de quo quis interrogatus sit, cum aliquo sit actio*,' that is, any in making answer is obliged by false confessions, if there be any action or dependence against him, upon that whereupon he was interrogate and confessed. and Panormitan is express, *ubi supra*, That '*non valet confessio, facta coram Judice, tanquam in judicio, nisi Juxta ad hoc se deat, per Bartol. in lib. 1. confessus, F. de custod. reor.*' That is, a confession is not valid, though made before a judge, as in judgment, except the judge be sitting on that business. Whence it is clear, that the acknowledgment libelled is no ways relevant to infer against the defender what is libelled to have been thereby acknowledged, except it were libelled, that he had been in judgment convened thereupon; or that there was a process depending against the said defender, wherein he had confessed what was libelled in judgment, and the parliament had been sitting on that process. But so it is, that neither is it, nor can be libelled, and therefore his naked acknowledgment not relevant; and in effect, if in any discourse before the parliament, any such word had escaped the defender, (which he in no wise acknowledges) yet that such a passing and unlibelable word should infer or prove a crime, or so high a crime against him, he is hopeful the honourable court of parliament will be very far from ever finding: For the very reason, why confession has so much weight, is because it is presumed that no man will confess against himself in judgment, that, whereupon he is convened and processed, without great deliberation: which holds not, if the acknowledgment be given out of any process, there being no dependent action or process upon the matter thereof. And therefore the defender is confident that he need not trouble the honourable court with more legal dispute against the relevancy of the alledged acknowledgment.

7. The words or acknowledgment libelled as spoken in parliament, 1649, can never be obtruded to the defender; nor that he was conscious to the counsel of that horrid murder of his late majesty: because it is notorious, and he offers to prove, if need be, that the whole

members of the said parliament, 1649, and he himself, amongst others, in plain parliament, were purged by their solemn oaths of all knowledge of, or accessions to that wicked design in relation to the king's majesty and house of parliament.

8. And yet he is so confident he never spake any such thing in parliament, that the day being condescended on, and dyet of sitting of parliament, as by all doctors is agreed it ought to be, then the defender offers to prove his *alibi*: he offers to prove, if need be, he was *alibi* all that dyet, and so not in parliament, where he is alleged to have spoken these words. And yet that the defender's innocency, as to the accession or knowledge of that horrid murder, may yet further appear, it is known to many persons, and to some of the members of this present parliament, that when Cromwell was in Scotland, A. D. 1650, notwithstanding it is known what malice he had to the defender at that time, in this particular he expressed himself concerning the marquis of Argyle, 'That he thought him a man that had neither courage nor honour to have been upon such a business.' And the defender thanks God he had so much honour and honesty, as in no wise to be accessory thereunto, and to abhor the same.

9. The defender ought to be assoilized from the two last Articles, as from all the others, from the year 1611, to his majesty's coming home to Scotland, A. D. 1650, because of the ratification and oblivion contained in his majesty's treaty at Breda, and most full and ample act of ratification and oblivion at St. Johnston and Sterling, A. D. 1650 and 1651.

And in regard the deeds libelled are either such as preceded the Treaty and Act of Oblivion in A. D. 1641, and were thereby pardoned and buried in oblivion; for such as intervened after the year 1641, before his majesty's home-coming, in the year 1650, during which time he is in his libel charged with several deeds which are irrelevant, and whereof the defender is most innocent. And for such public actings as the defender is charged with, and had accession to, the defender is also secured and pardoned by his majesty's treaty, and gracious condescendence at Breda, which was also thereafter ratified in parliament: or are deeds of necessary compliance, both for the public and self-preservation in that unhappy juncture. Which compliance, as it was sore against his inclination, if it had been in his power to have helped it, so it is not more than whole kingdoms did, and far less than many condescended to: It is in all humility expected, that the defender should be brought under the compass of law for the same, which were as to make him the singular sufferer in so universal a guilt; so there can be no precedent therefore instanced, either out of scripture, or holy writ, the histories of our own, or of other nations, that a subject not having contributed to the said usurpation, but to his power resisted the same, when the said unjust

usurpation prevailed, expelled the lawful magistrate, detained the unjust usurpation for many years, and tyrannized over the people when the lawful magistrate could not rule for the time, or protect or help; that the said subject for his compliance, and using endeavours for necessary, public, and self-preservation, should be indicted of so high a crime, is in all humility conceived without precedent or parallel, and quite contrary to the current of example and practice that may be from scripture and other histories adduced, and not so suitable to that goodness and natural clemency, whereof his majesty hath given so abundant proof to others, even the usurpers and invaders, and who aided and abetted them, without envy be it spoken; and which is not only most agreeable to his majesty's gracious inclination, but very suitable to that advice given by his royal father to him; in whose words, in one section, there are as follows, 'Your Prerogative is best shewed and exercised, in remitting, rather than in exacting the rigour of the law, than which nothing is worse.' In respect whereof, and of the defences above-mentioned, the defender ought to be absolved from this libel, and the whole articles therein contained\*.

\* The author of "An Apologetical Relation of the particular Sufferings of the faithful Ministry and Professors of the Church of Scotland, since August, 1660," in page 78, 79, 80, 81, and 82, gives the following account of the proceedings against this nobleman:

"This his compliance with them, at that time, by sitting in their judicatories, and their concurring with his advice and counsel, for the good of the land that was now under their feet, is the only particular ground upon which his sentence is founded; and the particular, special cause pretended, for which he was condemned to lose his head as a traitor, and to have his head put on the top of the Tollbooth as an eminent traitor." A sentence which, questionless, at first view, may make all men of understanding astonished, and to wonder how ever it could have entered into the mind of the parliament of Scotland, to sentence unto death such a peer of the land, such an useful member of the kingdom, and an ornament, upon such a ground, and for such a cause. But if these four particulars be considered, the matter will yet appear more wonderful.

"1. The matter of compliance with the English at that time, was so far from being accounted treasonable, that several of the lawyers, (among whom was one sir John Fletcher, who was now advanced to be his majesty's advocate, and did accuse this worthy nobleman of treason) did swear and subscribe an oath, to be faithful unto the government, as it was then established, without king and house of lords. Now if there had been treason really in this deed, either by the civil law, or by the municipal laws of the land, would not the lawyers have perceived it, whose daily work and study the laws are?

The Proceedings hereupon are thus related by bishop Burnet in his History of his own Times, vol. I. p. 122; &c.

"He hath council assigned him, who performed their part very well; the Marquis made a long speech himself, wherein he chiefly in-

"2. If this had been the deed of this nobleman alone, the matter had been less to have been wondered at; but it being such a deed whereof few of the nobles of Scotland were altogether free, yea, whereof many of the members of parliament his judges were guilty, the matter is beyond a parallel. It is hard to make *socios criminis* sit as judges, and condemn the accused; reason would require that the table should be purged. Is it not strange for a Parliament to condemn one for such a fault, for which many of their own members might with as much justice and equity be condemned? And is it not strange, how they being, by their own confession, traitors to the highest degree, could sit and judge others? It is true, it will be replied, that his majesty might pardon whom he pleased; but then it will evidently appear, that not this; but something else was the cause of this worthy nobleman's death. Whatever may be said in point of law, yet it will be a dispute in point of conscience, If kings may pardon such crimes as do deserve death by the law of God, or if such crimes which kings may pardon, of their own accord, and according to their own good pleasure, do before the Lord deserve death?

"3. If the parliament had thought this particular, worthy to bear so much stress, why would they have spent so much of their time in searching for other grounds to go upon? and why did they not make use of this at the first? But it is like this had never once been mentioned, if they had been able to fasten treason upon any other of his actions. And this makes it so much the more to be wondered at, that they would condemn such a nobleman for such a particular, which they would never once have named, if they could have done their intended work otherwise.

"4. Is it not strange, that of all the compliers of Scotland, there was not one, except this nobleman, impannelled upon this account, much less put to death; yea, is it not strange that those noblemen were never once questioned, who being desired by general Monk, when he was entering England with his army to encounter Lambert, did abjure king Charles and his interest, and this nobleman must die? Yea, is it not yet more strange that one William Purves, who by complying had occasioned almost ruin to many noblemen, burghs and gentlemen, should have been absolved by act of parliament, as might be cleared, if there were a table of the unprinted acts set down after their acts, as is done always in other parliaments, and yet this nobleman must be sentenced to death, for complying for the good of the country?



sisted, that during the late wars he was but one among a great many, more: he had always acted by authority of parliament, and according to the instructions that were given him, as oft as he was sent on any expedition or negotiation. As to all things done before the year 1641, the late king had buried them in an act of oblivion then passed, as the present king had also done in the year 1651: so he did not think he was bound to answer to any particular before that time. For the second head, he was at London when most of the barbarities set out in it were committed: nor did it appear that he gave any orders about them. It was well known that great outrages had been committed by the Mac Donalds: and he believed his people, when they had the better of them, had taken cruel revenges: This was to be imputed to the heat of the time, and to the tempers of the people, who had been much provoked by the burning of his whole country, and by much blood that was shed. And as to many stories laid to the charge of his men, he knew some of them were mere forgeries, and others were ag-

gravated much beyond the truth: but, what truth soever might be in them, he could not be answerable but for what was done by himself or by his orders. As to the third head, of his compliance with the usurpation, he had stood out till the nation was quite conquered: and in that case it was the received opinion both of divines and lawyers, that men might lawfully submit to an usurpation, when forced to it by an inevitable necessity. It was the epidemical sin of the nation. His circumstances were such, that more than a bare compliance was required of him. What he did that way was only to preserve himself and his family, and was not done on design to oppose the king's interest. Nor did his service suffer by any thing he did—This was the substance of his defence in a long speech, which he made with so good a grace and so skilfully, that his character was as much raised as his family suffered by the prosecution. In one speech, excusing his compliance with Cromwell, he said, what could he think of that matter, after a man so eminent in the law as his Majesty's advocate

“But to speak unto the business in point of law, let these four or five particular Quarres be considered, and then any shall be able to perceive the iniquity of this sentence.

“1. By what act of parliament is such a deed as this condemned as treasonable? By what municipal law can any member of the kingdom be challenged upon the account of treason, for treating with a conqueror for life and liberty: and for sitting in his counsels for the good of the country, after that he, with the rest of the body of the land, had fought in the defence of the king and country till no more could be done; after the whole land had been overcome in several battles, and wholly overrun: and had acted nothing for the advantage of the enemy, and disadvantage of the king and country, before the victory obtained; but in all points had carried as became a loyal subject, contributing all the help by arms and counsel which was required? What act of parliament declareth such a deed as this treasonable, and such a subject to deserve death as a traitor?

“2. Was there ever such a practice in Scotland since ever there was a king in it? Several times was the kingdom of Scotland over-run by the kingdom of England, particularly in the days of Baliol, and at that time king Edward caused the nobles of Scotland to swear allegiance unto him. But when Bruce came to be king, was there any of the nobles questioned for treason upon that account? And seeing there can no instance be produced out of the History of Scotland, since ever it was a kingdom, that any subject, nobleman or other, was accused of high-treason, for such a cause, surely this nobleman's case is unparalleled.

“3. Is not this strange, considering what the principle of royalists is? They say, That conquest giveth a just title to a crown; so sayeth D. Ferne, Arnisæus, and Maxwell, in his *Sacro*

*Sancto Regum Majestas*, c. 17. And by this principle Cromwell was the lawful supreme governor of the kingdom of Scotland, and had just title and right to the crown thereof, having now conquered the same. And if this principle of theirs be truth (which is much questioned by their opposites), no compliance with him could, by any law in the world, be treason against any prince whatsoever; for obedience unto, and concurrence with a lawful supreme magistrate, can be treason against no man living: How then could this nobleman be challenged upon the account of treason for compliance? Let all the royalists answer this, without contradicting themselves, if they can.

“4. Is there any lawyer who can produce such a definition of treason against a prince, or a supreme magistrate, out of the civil law, as will condemn the deed of this worthy nobleman, and make compliance with a conqueror for the good and safety of the country, after all means of defence are broken and lost, an act of treason? And since the civil law can condemn no such deed as treasonable, the sentence given out against this nobleman must be without all warrant of law.

“5. Are there not many countries, kingdoms and cities that have been over-run by their enemies, and have had their own lawful governors put from them, and so have been forced to live under the feet of strangers? And hath it not been usual for them to comply with such as had the present power in their hand, for their own safety and the good of the place? And was it ever yet heard, that such were accused and condemned of treason against their own lawful governors, thrust from them sore against their wills, for any such compliance? And is it not wonderful that this eminent nobleman should become a preparative to all the world.”

had taken the engagement? This inflamed the other so much, that he called him an impudent villain; and was not so much as child for that barbarous treatment. Lord Argyle gravely said he had learned in his affliction to bear reproaches; but if the parliament saw no cause to condemn him, he was less concerned at the king's advocate's failing. The king's advocate put in an additional article, of charging him with accession to the king's death, for which all the proof he offered lay in a presumption: Cromwell had come down to Scotland with his army in September 1648, and at that time he had many and long conferences with Argyle; and immediately upon his return to London the treaty with the king was broken off, and the king was brought to his Trial: the advocate from thence inferred, that it was to be presumed that Cromwell and Argyle had concerted that matter between them. While this process was carried on, which was the solemnest that ever was in Scotland, the lord Lorn continued at court soliciting for his father; and obtained a letter to be writ by the king to the earl of Middleton, requiring him to order his advocate not to insist on any public proceedings before the indemnity he himself had passed in the year 1651. He also required him, when the trial was ended, to send up the whole process, and lay it before the king, before the parliament should give sentence. The earl of Middleton submitted to the first part of this: So all farther enquiry into those matters was superseded. But as to the second part of the letter, it looked so like a distrust of the justice of the parliament, that he said, he durst not let it be known, till he had a second and more positive order, which he earnestly desired might not be sent; for it would very much discourage this loyal and affectionate parliament: and he begged earnestly to have that order recalled; which was done. For some time there was a stop to the proceedings, in which lord Argyle was contriving an escape out of the castle. He kept his bed for some days: and his lady being of the same stature with himself, and coming to him in a chair, he had put on her clothes, and was going into the chair: but he apprehended he should be discovered, and his execution hastened; and so his heart failed him. The earl of Middleton resolved, if possible, to have the king's death fastened on him. By this means as he would die with the more infamy, so he reckoned this would put an end to the family, since no body durst move in favour of the son of one judged guilty of that crime. And he, as was believed, hoped to obtain a grant of his estate. Search was made into all the precedents of men who had been at any time condemned upon presumption. And the earl of Middleton resolved to argue the matter himself, hoping that the weight of his authority would bear down all opposition. He managed it indeed with more force than decency: he was too vehement, and maintained the argument with a strength that

did more honour to his parts than to his justice or his character. But Gilmore, though newly made president of the session, which is the supreme court of justice in that kingdom, abhorred the precedent of attaining a man upon so remote a presumption; and looked upon it as less justifiable than the much-decried attainer of the earl of Strafford. So he undertook the argument against Middleton: they replied upon one another thirteen or fourteen times in a debate that lasted many hours. Gilmore had so clearly the better of the argument, that though the parliament was so set against Argyle that every thing was like to pass that might blacken him, yet, when it was put to the vote, he was acquitted as to that by a great majority: at which he expressed so much joy, that he seemed little concerned at any thing that could happen to him after that. All that remained was to make his compliance with the usurpers appear to be treason. The debate was like to have lasted long. The earl of Lowdon, who had been lord chancellor, and was counted the eloquentest man of that time, for he had a copiousness in speaking that was never exhausted, (he was come of his family and was his particular friend,) had prepared a long and learned argument on that head. He had gathered the opinions both of divines and lawyers, and had laid together a great deal out of history, more particularly out of the Scottish history, to shew that it had never been censured as a crime: but that on the contrary in all their confusions the men, who had merited the most of the crown in all its shakings, were persons who had got credit by compliance with the side that prevailed, and by that means had brought things about again. But, while it was doubtful how it would have gone, Monk, by an inexcusable baseness, had searched among his letters, and found some that were writ by Argyle to himself, that were hearty and zealous on their side. These he sent down to Scotland. And after they were read in parliament, it could not be pretended that his compliance was feigned, or extorted from him. Every body blamed Monk for sending these down, since it was betraying the confidence, that they then lived in. They were sent by an express, and came to the earl of Middleton after the parliament was engaged in the debate. So he ordered the letters to be read. This was much blamed, as contrary to the forms of justice, since probation was closed on both sides. But the reading of them silenced all farther debate. All his friends went out: And he was condemned as guilty of treason. The marquis of Montrose only refused to vote. He owned, he had too much resentment to judge in that matter. It was designed he should be hanged, as the marquis of Montrose had been: But it was carried that he should be beheaded, and that his head should be set up where lord Montrose's had been set. He received his sentence decently, and composed himself to suffer.

"The day before his death he wrote to the king, justifying his intentions in all he had

acted in the matter of the covenant: he protested his innocence, as to the death of the late king: he submitted patiently to his sentence, and wished the king a long and happy reign: he cast his family and children upon his mercy; and prayed that they might not suffer for their father's fault."

On the 27th of May, the day appointed for his execution, he came to the scaffold in a very solemn but undaunted manner, accompanied with many of the nobility and some ministers, when he spake as follows:

"Maggie will expect that I speak many things, and according to their several opinions and dispositions, so will their expectations be from me, and constructions of me; but I resolve to disappoint many, for I come not hither to justify myself, but the Lord, who is holy in all his ways, and righteous in all his works, holy and blessed is his name; neither come I to condemn others: I know many will expect that I will speak against the hardness of the sentence pronounced against me; but I will say nothing to it. I bless the Lord, I pardon all men, as I desire to be pardoned of the Lord myself: let the will of the Lord be done; That is all that I desire.

"I hope ye will have more charity to me now, than ye would have had at another time, seeing I speak before the Lord, to whom I must give an account very shortly. I know very well that my words have had but very little weight with many; and that many have mistaken my words and actions both: many have thought me to be a great enemy to these great works, that have of late been brought to pass. But do not mistake me, good people: I speak it in the presence of the Lord, I entered not upon the work of reformation with any design of advantage to myself, or prejudice to the king and his government; as my latter will which was written 1655, and thereafter delivered to a friend (in whose hands it still remaineth) can show. As for these calumnies, that have gone abroad of me, I bless God, I know them to be no more: and as I go to make a reckoning to my God, I am free as to any of these, concerning the king's person or government. I was real and cordial in my desires to bring the king home, and in my endeavours for him when he was at home, and I had no correspondence with the adversaries army, nor any of them, in the time when his majesty was in Scotland; nor had I any access to his late majesty's horrid and execrable murder, by counsel or knowledge of it, or any other manner of way. This is a truth, as I shall answer to my Judge. And all the time his majesty was in Scotland, I was still endeavouring his advantage; my conscience beareth me witness in it. So much to that particular. And (turning about, he said) I hope, gentlemen, you will all remember these.

"I confess, many look on my condition as a suffering condition: but I bless the Lord, that he that hath gone before me, hath trod the wine-press of the Father's wrath; by whose

sufferings, I hope that my sufferings shall not be eternal. I bless him that hath taken away the sting of my sufferings: I may say that my charter was sealed to-day; for the Lord hath said to me, Son, be of good cheer, thy sins are freely forgiven thee: and so I hope my sufferings shall be very easy. And ye know the Scripture saith, the captain of our salvation was made perfect by sufferings.

"I shall not speak much to these things for which I am condemned, lest I seem to condemn others: it is well known, it is only for compliance, which was the epidemical fault of the nation. I wish the Lord to pardon them: I say no more.

"There was an expression in these papers presented by me to the parliament, of the contagion of these times; which may by some be misconstrued, as if I intended to lay an imputation upon the work of reformation: but I declare that I intended no such thing; but only related to the corruptions and failings of men, occasioned by the prevailing of the usurping powers. (At this he turned and took them all witnesses.)

"Now, Gentlemen, concerning the nation, I think there are three sorts of people that take up much of the world and of this nation. There is, 1. The openly prophane: and truly I may say, though I have been a prisoner, I have not had mine ears shut: I hear assuredly, that drinking, swearing, whoring were never more common, never more countenanced than now they are. Truly, if magistrates were here I would say to them, if they lay forth their power for glorifying of God, by restraining this, they should fare the better; if they continue in not restraining, they shall fare the worse. I say no more, but either let people shun prophanity and magistrates restrain it, or assuredly the wrath of God shall follow on it. 2. Others were not openly prophane (every one will not allow that) but yet they are Gallios in the matter: if matters go well as to their private interest, they care not whether the church of God sink or swim. But whatever they think, God hath laid engagements upon Scotland: we are tied by covenants to religion and reformation: these that were then unborn are yet engaged; and in our baptism we are engaged to it. And it passeth the power of all the magistrates under heaven to absolve them from the Oath of God: they deceive themselves, and it may be would deceive others that think otherwise. But I would caveat this, people will be ready to think this a kind of instigation to rebellion in me; but they are very far wrong that think religion and loyalty are not well consistent. Whoever they be that separate them, religion is not to be blamed, but they. It is true, it is the duty of every Christian to be loyal, yet I think the orders of things are to be observed as well as their natures; the order of religion as well as the nature of it. Religion must not be the cock-boat, it must be the ship. God must have what is his, as well as Cæsar what is his: and those are the

best subjects that are the best Christians. And that I am looked on as a friend to reformation, is my glory.

"3. There is another sort that are truly Godly: and to them I must say what I fear, and every one hath reason to fear (it's good to fear evil.) It's true the Lord may prevent it; but if he do not (and truly I cannot foresee any probability of it) times are like either to be very sinning or very suffering times; and let christians make their choice: there is a sad dilemma in the business, sin or suffer; and surely, he that would chuse the better part would chuse to suffer. Others that will chuse to sin, shall not escape suffering; they shall suffer, but it may be, not as I do (pointing and turning about to the maiden) but worse; mine is but temporal, theirs shall be eternal; when I shall be singing, they shall be howling. Beware therefore of sin whatever you are aware of, especially in such times.

"Yet I cannot say of my own condition, but that the Lord in his providence hath mind of mercy to me, even in this world: for if I had been more favourably dealt with, I fear I might have been overcome with temptations, as many others are, and many more I fear will be; and so should have gone out of the world with a more polluted conscience, than through the mercy of God now I have. And hence my condition is such now, as when I am gone, will be seen not to have been such as many imagined. It is fit God take me away, before I fall into these temptations that I see others are falling into, and many others I fear will fall: I wish the Lord may prevent it. Yet blessed be his name, that I am kept both from present evils and evils to come. (Here he turned about a little and spoke some words to Mr. Hutchison, when turning again to the people, he spoke as followeth.) Some may expect I will regret my own condition: but truly I neither grudge nor repine, nor desire any revenge. And I declare I do not repent my last going up to London; for I had always rather have suffered any thing, than to lie under reproaches as I did. I desire not that the Lord should judge any man; nor do I judge any but myself: I wish, as the Lord hath pardoned me, so he may pardon them for this and other things; and what they have done to me, may never meet them in their accounts; I have no more to say, but to beg the Lord, that when I go away, he would bless every one that stayeth behind."

(His last words, immediately before he laid his head on the block, after his doblet was off, were these.) "I desire you, gentlemen, all that hear me this day to take notice (and I wish that all who see me might hear me) that now when I am entering into eternity, and am to appear before my Judge; and as I desire salvation, and do expect eternal salvation and happiness from him, from my birth to my scaffold, I am free from any accession by my knowledge, concerning counsel or any other way to his late Majesty's death: and I pray the Lord

to preserve his present Majesty, and to pour his best blessings on his person and government; and the Lord give him good and faithful counsellors." (Turning about to his friends, he said,) Many christians may stumble at this, and my friends may be discontented; but when things are rightly considered, my friends have no discredit of me, nor christians no stumbling-block, rather an engagement.

When he had done speaking he took his leave of his friends very decently, and after some time spent in his private devotions, he was beheaded.\*

\* "The public hatred which he had incurred while alive, was converted into general commiseration at his death. His attainder was justly imputed to the enmity, his precipitate death to the impatience and insatiate desire of Middleton to procure a gift of his titles and estate; and as it generally happens to whoever a statesman suffers, whether from national justice or revenge, his execution served to exalt, and to relieve his character, from the obloquy which would have continued to attend him, had he been permitted to survive. His letters to Monk are lost, and the records of his trial have been carefully destroyed. But we discover from Thurloe's papers, that he was obnoxious to Cromwell and to Monk himself, as a suspected royalist; and that he was excluded during the usurpation, from employment or trust. Under a jealous usurpation, professions of the most zealous attachment were requisite for the preservation of a suspected royalist; and we must conclude that the letters employed for his destruction were necessary to appease the suspicions or the resentment of Monk. His original share, as a chief instrument in the Civil Wars, of which he was not convicted, is represented as some apology for the sentence on which he was executed; but the apology becomes the more dangerous as a pretext that is never wanting for judicial murder. Originally driven into rebellion, by an insidious plan to invade his country, and to deprive him of a large part of his estate, he incurred the imputation of whatever violent measures it was necessary to tolerate, or impossible to prevent. But his character, impartially examined, was that of a better patriot than a subject, more attached to the national religion than to the interests of the crown. His ambition was regulated by habitual prudence, penetration, experience, and consummate address; but his sagacity was not always exempt from enthusiasms; his pruudence was apt to degenerate into craft, and the apprehensions which his subtle dexterity excited, occasioned his destruction. His services in the recall of Charles to Scotland, deserved a better fate; but his enemies were disappointed by Lauderdale's intercession, and his son was afterwards restored to a part of his titles, and to the possession of his estates." 4 Laing, 16.

"The marquis of Argyle (without mentioning of whom there can hardly be any mention of Scotland) though he was not of this fraternity, yet thought he could tell as fair a story for himself as any of the rest, and contribute as much to the king's absolute power in Scotland. And therefore he had no sooner unquestionable notice of the king's being in London, but he made haste thither with as much confidence as the rest. But the Commissioners who were before him wrought so far with the king, that in the very minute of his arrival he was arrested by a warrant under the king's hand, and carried to the Tower, upon a Charge of High Treason. He was a man like Drances in Virgil;

'Largus opum, et lingua melior, sed frigida bello  
'Dextera, consiliis habitus non futilis auctor,  
'Seditioe potens.'

"Without doubt he was a person of extraordinary cunning, well bred; and though by the ill-placing of his eyes, he did not appear with any great advantage at first sight, yet he reconciled even those who had aversion to him very strangely by a little conversation: Insomuch as after so many repeated indignities (to say no worse) which he had put upon the late king, and when he had continued the same affronts to the present king, by hindering the Scots from inviting him, and as long as was possible kept him from being received by them; when there was no remedy, and that he was actually landed, no man paid him so much reverence and outward respect, and gave so good an example to all others, with what veneration their king ought to be treated, as the marquis of Argyle did, and in a very short time made himself agreeable and acceptable to him. His wit was pregnant, and his humour gay and pleasant, except he liked not the company or the argument. And though he never consented to any one thing of moment, which the king asked of him, and even in those seasons in which he was used with most rudeness by the clergy, and with some barbarity by his son the lord Erne, whom he had made captain of his majesty's guard, to guard him from his friends and from all who he desired should have access to him; the marquis still had that address, that he persuaded him all was fit the best. When the other faction prevailed, in which there were likewise crafty managers, and that his counsels were commonly rejected, he carried himself so, that they who hated him most were willing to compound with him, and that his majesty should not withdraw his countenance from him. But he continued in all his charges, and had a very great party in that parliament that was most devoted to serve the king; so that his majesty was often put to desire his help to compass what he desired. He did heartily oppose the king's marching with his army into England, the ill success whereof made many men believe afterwards, that he had more reasons for the counsels he gave, than they had who were of another opi-

nion. And the king was so far from thinking him his enemy, that when it was privately proposed to him by those he trusted most, that he might be secured from doing hurt when the king was marched into England, since he was so much against it; his majesty would by no means consent to it, but parted with him very graciously, as with one he expected good service from. All which the Commissioners well remembered, and were very unwilling that he should be again admitted into his presence, to make his own excuses for any thing he could be charged with. And his behaviour afterwards, and the good correspondence he had kept with Cromwell, but especially some confident averments of some particular words or actions which related to the murder of his father, prevailed with his majesty not to speak with him, which he laboured by many addresses, in petitions to the king and letters to some of those who were trusted by him, which were often presented by his wife and his son, and in which he only desired 'to speak with the king or with some of those lords,' pretending 'that he should inform and communicate somewhat that would highly concern his majesty's service.' But the king not vouchsafing to admit him to his presence, the English lords had no mind to have any conference with a man who had so dark a character, or to meddle in an affair that must be examined and judged by the laws of Scotland: And so it was resolved, that the marquis of Argyle should be sent by sea into Scotland, to be tried before the parliament there when the Commissioner should arrive, who was dispatched thither with the rest of the lords, as soon as the seals and other badges of their several offices could be prepared.

"As soon as the parliament was convened at Edinburgh, and the Commissioner found the temper of them to be such as he could wish, the marquis of Argyle (who had been sent by sea from the Tower of London to Leith) was brought to his trial upon many articles of treason and murder; wherein all his confederacies with Cromwell were laid open, and much insisted upon to prove his being privy to the resolution of taking the king's life, and advising it: and though there was great reason to suspect it, and most men believed it, the proofs were not clear enough to convict him. But then the evidence was so full and clear of so many horrid murders, committed by his order upon persons in his displeasure, and his immediate possessing himself of their estates, and other monstrous and unheard of acts of oppression; that the parliament condemned him to be hanged upon a gallows of an unusual height, and in ~~near~~ the place where he had caused the marquis of Montrose to be formerly executed: all which was performed the same day with the universal joy of the people; the unfortunate person himself shewing more resolution and courage than was expected from him, and expressing much affection and zeal for the Covenant, for which he desired all men should

believe he was put to death. There was likewise one seditious preacher, Gilaspie, who had been a notorious and malicious rebel against the last and the present king, underwent the same trial and judgment, with the same faith in the Covenant, and without shew of repentance. And it was much wondered at, that none more of that tribe, which had kindled the fire that had almost burned two kingdoms, and never had endeavoured to extinguish it, were ever brought to justice; and that the lives of two men should be thought a sufficient sacrifice for that kingdom to offer for all the mischief it had done." Clarendon.

Other Criminal Proceedings in Scotland soon afterwards followed, of which the following mention is made by Burnet and Laing:

"In August, 1660, the earl of Glencairn was sent down to Scotland, and had orders to call together the Committee of Estates. This was a practice begun in the late times: when the parliament made a recess, they appointed some of every state to sit, and to act as a Council of State in their name till the next session for which they were to prepare matters, and to which they gave an account of their proceedings. When the parliament of Sterling was adjourned, the king being present, a Committee had been named: so, such of these as were yet alive were summoned to meet, and to see to the quiet of the nation, till the parliament should be brought together; which did not meet before January. On the day in which the Committee met, ten or twelve of the Protesting Ministers met likewise at Edinburgh, and had before them a warm paper prepared by one Guthery, one of the violentest ministers of the whole party. In it, after some cold compliment to the king upon his Restoration, they put him in mind of the Covenant which he had so solemnly sworn while among them: they lamented that, instead of pursuing the ends of it in England, as he had sworn to do, he had set up the Common Prayer in his chapel, and the order of bishops: upon which they made terrible denunciations of heavy judgments from God on him, if he did not stand to the Covenant, which they called the oath of God. The earl of Glencairn had notice of this meeting: and he sent and seized on them together with this remonstrance. The paper was voted scandalous and seditious: and the ministers were all clapt up in prison, and were threatened with great severities. Guthery was kept still in prison, who had brought the others together: but the rest after a while's imprisonment were let go. Guthery, being minister of Sterling while the king was there, had let fly at him in his Sermons in a most indecent manner; which at last became so intolerable, that he was cited to appear before the king to answer for some

passages in his Sermons: he would not appear, but declined the king and his council, who, he said, were not proper judges of matters of doctrine, for which he was only accountable to the judicatories of the Kirk. He also protested for remedy of law against the king, for thus disturbing him in the exercise of his ministry. This personal affront had irritated the king more against him, than against any other of the party. And it was resolved to strike a terror into them all, by making an example of him. He was a man of courage, and went through all his trouble with great firmness. But this way of proceeding struck the whole party with such a consternation, that it had all the effect which was designed by it: for whereas the pulpits had, to the great scandal of religion, been places where the preachers had for many years vented their spleen and arraigned all proceedings, they became now more decent, and there was a general silence every where with relation to the affairs of state: only they could not hold from private and secret insinuations, as if the ark of God was shaking, and the glory departing. A great many offenders were summoned, at the king's suit, before the Committee of Estates, and required to give bail, that they should appear at the opening of the parliament, and answer to what should be then objected to them. Many saw the design of this was to fight them into a composition, and also into a concurrence with the measures that were to be taken. For the greater part they complied, and redeemed themselves from further vexation by such presents as they were able to make. And in these transactions Primrose and Fletcher were the great dealers."

"A few days after Argyle, Guthry suffered. He was accused of accession to the renontrance when the king was in Scotland, and for a book he had printed with the title of "The Causes of God's Wrath upon the Nation;" in which the treating with the king, the tendering him the Covenant, and the admitting him to the exercise of the government, were highly aggravated, as great acts of treason. His declining the king's authority to judge of his Sermons, and his protesting for remedy of law against him, and the late seditious paper that he was drawing others to concur in, were the matters objected to him. He was a resolute and stiff man: so when his lawyers offered him legal defences, he would not be advised by them, but resolved to take his own way. He confessed, and justified all that he had done, as agreeing to the principles and practices of the Kirk, who had asserted all along that the doctrine delivered in their Sermons did not fall under the cognisance of the temporal courts, till it was first judged by the church: for which he brought much tedious proof. He said, his protesting for remedy of law against the king was not meant at the king's person, but was only with relation to costs and damages. The earl of Middleton had a personal animosity against him; for in

the late times he had excommunicated him: so his eagerness in the prosecution did not look well. The defence he made signified nothing to justify himself, but laid a great load on Presbytery; since he made it out beyond all dispute, that he had acted upon their principles, which made them the more odious, as having among them some of the worst maxims of the Church of Rome; that in particular, to make the pulpit a privileged place, in which a man might safely vent treason, and be secure in doing it, if the Church judicatory should agree to acquit him. So upon this occasion great advantage was taken, to shew how near the spirit that had reigned in Presbytery came up to Popery. It was resolved to make a public example of a preacher: so he was singled out. He gave no advantage to those who wished to have saved him by the least step towards any submission, but much to the contrary. Yet, though all people were disgusted at the earl of Middleton's eagerness in the prosecution, ~~the earl of Lauderdale~~ was the only man that moved against the putting him to death. He said, banishment had been hitherto the severest censure that had been laid on the preachers for their opinions: he knew Guthrie was a man apt to give personal provocation: and he wished that might not have too great a share in carrying the matter so far. Yet he was condemned to die. I saw him suffer. He was so far from shewing any fear, that he rather expressed a contempt of death. He spoke an hour upon the ladder, with the composure of a man that was delivering a Sermon rather than his last words. He justified all he had done, and exhorted all people to adhere to the Covenant, which he magnified highly. With him one Gouan was also hanged, who had deserted the army while the king was in Scotland, and had gone over to Cromwell. The man was inconsiderable, till they made him more considered by putting him to death on such an account at so great a distance of time.

"The gross iniquity of the court appeared in nothing more eminently than in the favour shown Maccloud of Assin, who had betrayed the marquis of Montrose, and was brought over upon it. He in prison struck up to a high pitch of vice and impiety, and gave great entertainments: and that, notwithstanding the baseness of the man and of his crimes, begot him so many friends, that he was let go without any censure. The proceedings against Wariston were soon dispatched, he being absent. It was proved that he had presented the Remonstrance, that he had acted under Cromwell's authority, and had sat as a peer in his parliament, that he had confirmed him in his Protectorship, and had likewise sat as one of the Committee of Safety: so he was attainted. Swintoun had been attainted in the parliament at Sterlin for going over to Cromwell: So he was brought before the parliament to hear what he could say, why the sentence should not be executed. He was then become a Quaker; and did, with a sort of eloquence

that moved the whole house, lay out all his own errors, and the ill spirit he was in when he committed the things that were charged on him, with so tender a sense, that he seemed as one indifferent what they should do with him: And, without so much as moving for mercy, or even for a delay, he did so effectually prevail on them, that they recommended him to the king, as a fit object of his mercy. This was the more easily consented to by the earl of Middleton, in hatred to the earl of Lauderdale, who had got the gift of his estate. He had two great pleas in law: The one was, that the record of his attainder at Sterlin, with all that had passed in that parliament, was lost: The other was, that by the act rescissory that parliament being annulled, all that was done by it was void: But he urged neither, since there was matter enough to attaint him anew, if the defects of that supposed attainder had been observed. So till the act of indemnity was passed he was still in danger, having been the man of all Scotland that had been the most trusted and employed by Cromwell: But upon passing the act of indemnity he was safe." Burnett, 126.

"One of the first things that was done in this session of parliament 1663, was the execution of my unfortunate uncle, Warriston. He was so disordered both in body and mind, that it was a reproach to a government to proceed against him: His memory was so gone, that he did not know his own children. He was brought before the parliament, to hear what he had to say, why his execution should not be awarded. He spoke long, but in a broken and disordered strain, which his enemies fancied was put on to create pity. He was sentenced to die. His deportment was unequal, as might be expected from a man in his condition. Yet when the day of his execution came, he was very serene. He was cheerful, and seemed fully satisfied with his death. He read a speech twice over on the scaffold, that to my knowledge he composed himself, in which he justified all the proceedings in the covenant, and asserted his own sincerity; but condemned his joining with Cromwell and the sectaries, though even in that his intentions had been sincere, for the good of his country, and the security of religion. Lord Lauderdale had lived in great friendship with him: But he saw the king was so set against him, that he, who at all times took more care of himself than of his friends; would not in so critical a time seem to favour a man, whom the Presbyterians had set up as a sort of an idol among them, and on whom they did depend more than on any other man then alive." Burnett, 203.

"The next after Argyle was Guthrie, a clergyman accused of framing or promoting the western remonstrance, and of protesting against the authority of the king, or the interposition of the council, in ecclesiastical affairs. To decline the authority of

either was treason, but the punishment, from its undue severity, had never been inflicted; and the offence itself, if aggravated by the violence of his publications, was extenuated, and ought to have been obliterated, at the distance of ten years, by his resolute opposition to the usurper's government. But his real crimes were a sentence of excommunication which he had formerly pronounced against the commissioner, and the report of some personal indignities which he had offered to the king. His defence was firm, yet pronounced with such pathetic effect, that many withdrew from having any concern in his sentence or death. He was executed with an obscure despatch, and died with that unshaken fortitude and contempt of life which enthusiasm inspires. Rutherford was removed by an opportune death; Gillespie and other remonstrants were preserved by a confession of their guilt. Warriston, who had escaped to the continent, was attainted, and Swinton, who had turned quaker, acknowledged his offences with such ingenuous contrition, that he was recommended to mercy, but deprived of his estate."

4 Laing, 18.

"Johnston of Warriston, who had escaped to the continent, and had resided two years unmolested at Hamburg, was discovered at Rouen on his removal to France, and delivered up to the resentment of the English court. When produced in the present parliament to receive sentence of death, his faculties were so much decayed, and his body so debilitated by age and sickness, or by the treacherous prescription of the king's physician,\* that his in-

coherent defence afforded a subject of cruel derision to his enemies, and a melancholy spectacle to the compassion of his friends. His sentence in such a situation, was a reproach to government. Lauderdale durst not, however, protect a man whom the presbyterians revered, and against whom the king was personally exasperated. His faculties seemed to revive on the scaffold, where he spoke and suffered with devout enthusiasm. Among the presbyterians, his lengthened devotions, and zeal for the covenant, had procured a reputation of superior sanctity, which, as it was confirmed by martyrdom, is still preserved. But he was a man of more than common understanding or genius; of an active, violent, and disinterested spirit; of a quick and vivid invention; of an extensive and tenacious memory; incapable of repose; indefatigable in application; ever fertile in expedients; endowed with a vehement, prompt, and impressive elocution; and at a time when the nobility themselves were statesmen, his political talents raised him from an obscure advocate, to a level with the prime nobility in affairs of state."\* 4 Laing, 35.

The endeavours made to obtain full accounts of these Proceedings have not been successful.

drained of sixty ounces of blood by Bates, author of the *Elenchus Motuum*, and successively physician to Cromwell and to Charles 2. Nor is it discountenanced by Bates's character, who permitted his friends to boast, after the restoration, that he had accelerated Cromwell's death by his prescriptions. *Biograph. Brit.*

\* Strange as this circumstance may appear, it is asserted by Kirkton, who attended him in prison, and intimated in his speech on the scaffold, that he was poisoned at Hamburg, and

\* Burket, i. 37, 297, Naphtali. Warriston kept a minute diary of his life, which, if still extant, would explain the most secret transactions of the covenanters. Kirkton, MS.

END OF VOL. V.









